UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-05-88/2-T

Date: 12 December 2012

Original: English

IN TRIAL CHAMBER II

Before: **Judge Christoph Flügge, Presiding**
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: **Mr. John Hocking**

Judgement of: **12 December 2012**

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC WITH CONFIDENTIAL ANNEX C

JUDGEMENT

The Office of the Prosecutor:
Peter McCloskey

The Accused:
Zdravko Tolimir

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ANNEX C: CONFIDENTIAL ANNEX 1

I. INTRODUCTION

A. Summary of Charges

1. This Chamber is seised of a case which concerns the events that engulfed Eastern Bosnia, more specifically the Srebrenica and Žepa enclaves between 1992 and 1995.

2. Zdravko Tolimir, the accused in this case ("Accused"), was an Assistant Commander and the Chief of the Sector for Intelligence and Security Affairs of the Main Staff of the Army of the Republika Srpska ("VRS") during the time relevant to the Indictment.[1] The Accused is charged with crimes under eight counts pursuant to Articles 3, 4, and 5 of the Statute of the Tribunal ("Statute"): Genocide (Count 1), Conspiracy to Commit Genocide (Count 2), Extermination (Count 3), Murder (Counts 4 and 5), Persecutions (Count 6), Forcible Transfer (Count 7), and Deportation (Count 8). Pursuant to Article 7(1), the Accused, by his acts and omissions, allegedly committed, ordered, instigated, planned, or otherwise aided and abetted in the planning, preparation, and execution of the charged crimes.[2]

3. According to the Prosecution, the Accused committed the crimes through his participation in two Joint Criminal Enterprises ("JCE"): to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves ("JCE to Forcibly Remove"), and to murder able-bodied Bosnian Muslim men from the Srebrenica enclave ("JCE to Murder"),[3] as summarised below.

1. JCE to Forcibly Remove

4. The Prosecution case is that the Accused, together with others, knowingly participated in the JCE to Forcibly Remove, the common purpose of which was to force the Bosnian Muslim population out of the Srebrenica and Žepa enclaves from about 8 March 1995 through the end of August 1995.[4]

5. In May 1992, the leadership of the Republika Srpska ("RS") allegedly issued a goal to create "State borders separating the Serbian people from the other two ethnic communities".[5] On 8 March 1995, RS President Karadžić issued Operative Directive 7, ordering, *inter alia*, the creation of "an unbearable situation of total insecurity, with no hope of further survival or life for the inhabitants" of the Srebrenica and Žepa enclaves.[6] As part of the organised effort to make life

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1 Indictment, paras. 2, 71.
2 Indictment, paras. 1–50, 66, 68–69.
3 Indictment, paras. 10–69.
4 Indictment, para. 35.
5 Indictment, para. 3.
6 Indictment, paras. 8, 36.

impossible for the Bosnian Muslims and remove them from the enclaves, from March through July 1995, the VRS deliberately restricted humanitarian aid and relief supplies to the Bosnian Muslim population of Srebrenica and Žepa, as well as UNPROFOR supplies, while subjecting the population to shelling, sniping, and artillery fire.[7] In June 1995, an attack was ordered upon Srebrenica with the purpose of forcing the entire population of the Srebrenica enclave into its urban area, thereby creating conditions where it would be impossible for the entire Bosnian Muslim population to sustain itself and would require their departure from the area.[8] Following the VRS attack on the Srebrenica enclave in early July,[9] on 10 and 11 July, thousands of Bosnian Muslims, including women, children, and some men, fled to the UN compound in Potočari.[10] Meanwhile, on 11 July, when the Srebrenica enclave fell, about 15,000 Bosnian Muslim men gathered at the villages of Šušnjari and Jaglići, and fled in a huge column through the woods towards Tuzla.[11]

6. It is alleged that on the evening of 11 July and the morning of 12 July, three critical meetings concerning the fate of the Bosnian Muslims who had fled to Potočari took place at the Hotel Fontana in Bratunac between the VRS leadership and members of DutchBat.[12] The first meeting was held between the VRS Main Staff Commander Ratko Mladić and other VRS members and DutchBat.[13] In addition to the VRS and DutchBat officials, the second and third meetings were joined by representatives of the Bosnian Muslim refugees in Potočari.[14] Following this, buses and trucks arrived near the UN compound in Potočari, and thousands of Bosnian Muslim women, children, and elderly were transported by members of VRS and RS Ministry of Interior ("MUP") (collectively, "Bosnian Serb Forces") to the territory held by the Army of Bosnia and Herzegovina ("ABiH").[15] The transportation continued until 13 July.[16]

7. As to the Bosnian Muslim men gathered in Potočari, the Prosecution argues that on the afternoon of 12 July through 13 July, they were separated from the women, children, and elderly by members of the Bosnian Serb Forces.[17] Also on 13 July, approximately 5,000 to 6,000 Bosnian Muslim males from the column were captured by or surrendered to Bosnian Serb Forces along the

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7 Indictment, paras. 37–40.
8 Indictment, para. 39.
9 Indictment, para. 40.
10 Indictment, para. 42.
11 Indictment, paras. 41–42.
12 Indictment, paras. 43–45.
13 Indictment, para. 43.
14 Indictment, paras. 44–45 (alleging that the second meeting was joined by one representative of the Bosnian Muslim refugees and the third meeting by representatives of the Bosnian Muslim refugees).
15 Indictment, para. 47.
16 Indictment, para. 47.
17 Indictment, para. 48.

Bratunac–Konjević Polje–Milići road in the areas of Kravica, Sandići, Konjević Polje, and Milići.[18] Their personal belongings and property were confiscated by members of the Bosnian Serb Forces.[19]

8. With regard to alleged forcible removal of the Bosnian Muslim population in the Žepa enclave, the Prosecution alleges that in early July 1995, while the attack on the Srebrenica enclave was ongoing, the VRS made preparations to attack the Žepa enclave and force the population from there by firing and shelling.[20] In Žepa, three separate negotiations took place between the VRS leadership, including the Accused, and Bosnian Muslim representatives of the Žepa enclave on 13 July, 19 July, and 24 July, when an agreement was reached.[21] On 25 July, the transportation of women and children from Žepa began.[22] On or about the same day, due to fear that they could be harmed or killed if they surrendered to the VRS, hundreds of mostly able-bodied Bosnian Muslim men began to flee across the Drina River to Serbia.[23]

9. The Prosecution further submits that opportunistic killings that took place in Potočari, Bratunac, Kravica, and Petkovci, targeted killings of three Bosnian Muslim leaders from Žepa, as well as persecutory acts relating to these killings were the natural and foreseeable consequences of the JCE to Forcibly Remove.[24]

10. The Accused, as a member of the JCE to Forcibly Remove, allegedly committed acts in furtherance of that JCE as described above; other acts by the Accused include: (a) making life unbearable for the Bosnian Muslim population; (b) defeating the ABiH militarily; (c) disabling the local UN forces militarily, including preventing and controlling outside international protection of the enclaves; and (d) controlling the movement of the Bosnian Muslim population out of the two enclaves.[25]

2. JCE to Murder

11. The Prosecution submits that between on or around 11 July and around 1 November 1995, the Accused, together with others, knowingly participated in the JCE to Murder, the common purpose of which was to summarily execute and bury thousands of Bosnian Muslim men and boys aged 16 to 60 captured from the Srebrenica enclave.[26]

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18 Indictment, para. 49.
19 Indictment, para. 50.
20 Indictment, para. 51.
21 Indictment, paras. 52–56.
22 Indictment, para. 57.
23 Indictment, para. 57.
24 Indictment, paras. 22, 22.1–22.4, 23.1, 61.
25 Indictment, para. 60.
26 Indictment, paras. 10, 27.

12. According to the Prosecution, in the evening hours of 11 July and on the morning of 12 July, while the plan to forcibly transfer the Bosnian Muslim population from Potočari was developed, Mladić and others also developed a plan to murder the hundreds of able-bodied Bosnian Muslim men separated from the crowd in Potočari.[27] The execution of this plan allegedly began on the afternoon of 12 July; throughout the day and continuing 13 July, these men were separated and then detained temporarily in buildings and vehicles in Bratunac through 14 July.[28] Meanwhile, as described above, the Bosnian Muslim men who left in the column on 11 July started surrendering or being captured by the Bosnian Serb Forces, by which time the plan to kill the able-bodied men from the Srebrenica enclave encompassed the murder of this group of men.[29]

13. It is alleged that the large scale and systematic killing operation of the Bosnian Muslim men from Srebrenica, including burials of their bodies, began on the morning of 13 July and continued through July or August 1995 in the Bratunac and Zvornik areas.[30] Furthermore, from about 1 August 1995 through about 1 November 1995, members of the Bosnian Serb Forces participated in an organised and comprehensive effort to conceal the killings in these areas, by reburying bodies exhumed from initial mass graves.[31]

14. The Prosecution further alleges that opportunistic killings that took place in Potočari, Bratunac, Kravica, and Petkovci and persecutory acts relating to these killings were the natural and foreseeable consequences of the JCE to Murder.[32]

15. The Accused, as a member of the JCE to Murder, allegedly committed acts in furtherance of this JCE as described above; other acts by the Accused include: (a) with full knowledge of the plan to summarily execute the able-bodied men from Srebrenica, assisting in and facilitating the forcible transfer of the Bosnian Muslim population of Srebrenica; (b) proposing to his commander, Mladić, that the hundreds of Bosnian Muslim prisoners being detained along the Konjević-Polje–Bratunac road be secreted from international forces by being placed in buildings so they could not be viewed from the air; (c) supervising the 10th Sabotage Detachment on 16 July, when its elements summarily executed more than 1,700 Muslim men and boys at Branjevo Military Farm and Pilica Cultural Centre, and on or about 23 July, when its elements summarily executed approximately 39 Bosnian Muslim men at Bišina; and (d) by virtue of his position and authority vested in him by

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27 Indictment, para. 18.
28 Indictment, para. 19.
29 Indictment, para. 20.
30 Indictment, paras. 21, 21.1–21.16.
31 Indictment, para. 23.
32 Indictment, paras. 22, 22.1–22.4, 28.

Mladić, having responsibility for handling all of the Bosnian Muslim prisoners taken after the fall of the Srebrenica enclave and to ensure their safety and welfare, but failing to do so.[33]

B. Pre-Trial Proceedings

1. Indictment, Joinder, and Severance of Case

16. The Accused was indicted with two other accused—Radivoje Miletić and Milan Gvero—in February 2005.[34] On 10 June 2005, the Prosecution filed a motion for joinder,[35] seeking to consolidate *Prosecutor v. Tolimir, Miletić, and Gvero*[36] with the following cases: *Prosecutor v. Popović*;[37] *Prosecutor v. Beara*;[38] *Prosecutor v. Drago Nikolić*;[39] *Prosecutor v. Borovčanin*;[40] and *Prosecutor v. Pandurević and Trbić*.[41] On 28 June 2005 the Prosecution filed a motion to amend the indictments and to replace them with a single Consolidated Amended Indictment.[42]

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33 Indictment, para. 29.

34 *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-I, Indictment, 8 February 2005. The Indictment was confirmed by Judge Liu and placed under seal. Decision on Review of Indictment and Order for Non-Disclosure, 10 February 2005.

35 *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Prosecution's Motion for Joinder of Accused, 10 June 2005.

36 *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-I, Indictment, 8 February 2005.

37 *Prosecutor v. Popović*, Case No. IT-02-57-I, Indictment, 26 March 2002. The Indictment was confirmed by Judge Schomburg and placed under seal. *Prosecutor v. Popović*, Case No. IT-02-57-I, Order on Review of Indictment Pursuant to Article 19 of the Statute and Order for Non-Disclosure, 26 March 2002.

38 *Prosecutor v. Beara*, Case No. IT-02-58-I, Indictment, 26 March 2002. The Indictment was confirmed by Judge Schomburg. *Prosecutor v. Beara*, Case No. IT-02-58-I, Order on Review of Indictment Pursuant to Article 19 of the Statute, 26 March 2002.

39 *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-I, Indictment, 6 September 2002. The Indictment was confirmed by Judge Schomburg and placed under seal. *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-I, Order Confirming Indictment Pursuant to Article 19, Order Concerning Non-disclosure, and Order Issuing Arrest Warrant, 6 September 2002.

40 *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Indictment, 6 September 2002. The Indictment was confirmed by Judge Schomburg. *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Order Confirming Indictment Pursuant to Article 19, Order Concerning Non-disclosure, and Order Issuing Arrest Warrant, 6 September 2002.

41 *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-I, Indictment, 10 February 2005. The Indictment was confirmed by Judge Liu. Decision on Review of Indictment and Order for Non-Disclosure, 24 March 2005. The Prosecution was also ordered to withdraw the initial indictment against Pandurević, confirmed on 2 November 1998 by Judge Mumba in the case *Prosecutor v. Krstić, Pandurević and Blagojević*, as amended on 27 October 1999.

42 *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Prosecution's Motion for Amendments to the Indictments and Annex A, 28 June 2005 ("Consolidated Amended Indictment"). In its motion the Prosecution requested, *inter alia*, that the charges of genocide, conspiracy to commit genocide, and extermination be added to the case against Zdravko Tolimir. A corrigendum was filed on 15 July 2005. *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Corrigendum to Prosecution's Consolidated Amended Indictment, confidential, 15 July 2005.

17. On 21 September 2005, Trial Chamber III granted the motion for joinder.[43] On 26 September 2005, the case against the nine accused was assigned to Trial Chamber II.[44] Judge Agius was appointed as the Pre-Trial Judge on 5 October 2005.[45] On 31 October 2005 the Chamber ordered that the Consolidated Amended Indictment be the operative indictment against the nine accused.[46]

18. On 22 and 29 March 2006, the Prosecution filed two additional motions seeking to amend the Consolidated Amended Indictment.[47] On 31 May 2006, the Chamber's Decision on Motions Challenging the Indictment Pursuant to Rule 72 granted in part the motions to amend the Consolidated Amended Indictment.[48] Pursuant to this decision the Prosecution submitted its Second Consolidated Indictment on 4 August 2006 at which time the Accused remained at large.[49] On 15 August 2006, the Accused's case was severed from the joint case[50] and the Prosecution filed a separate Indictment against him on 28 August 2006.[51]

19. The Accused was arrested on 31 May 2007 and transferred to the seat of the Tribunal the following day.[52] On 6 June 2007, the Prosecution filed a motion for joinder of the *Tolimir* case with the *Popović et al.* case; it was denied on 20 July 2007 due to the advanced stage of the *Popović et al.* trial.[53] On 12 June 2007, the Prosecution filed an amended indictment correcting the 28 August 2006 Indictment.[54] On 3 July 2007, the Pre-trial Judge granted the Prosecution's request for leave to

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43 *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Decision on Motion for Joinder, 21 September 2005. By order of the President, the Joinder Motion had been assigned to Trial Chamber III. Order Referring the Joinder Motion, *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, 29 June 2005; Corrigendum to Order Referring the Joinder Motion, 4 July 2005.

44 *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Order Assigning a Case to a Trial Chamber, 26 September 2005.

45 *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Order Designating a Pre-Trial Judge, 5 October 2005.

46 *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Order on the Consolidated Amended Indictment, 31 October 2005.

47 *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Motion to Amend the Indictment Relating to Ljubomir Borovčanin, 22 March 2006; *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Motion to Amend the Indictment Relating to the 22 March 2006 Appeals Chamber Judgement in the Case of *Stakić*, 29 March 2006.

48 *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Decision on Motions Challenging the Indictment Pursuant to Rule 72, 31 May 2006.

49 *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Submission pursuant to the Trial Chamber's Decision on Further Amendments and Challenges to the Indictment and Motion Seeking Leave to Make Additional Minor Corrections, partly confidential, 4 August 2006 ("Second Consolidated Indictment").

50 Order on Operative Indictment and Severance of the Case against Zdravko Tolimir, 15 August 2006.

51 Indictment, 28 August 2006 ("28 August 2006 Indictment").

52 Decision on Submissions of the Accused Concerning Legality of Arrest, 18 December 2008; Order for Detention on Remand, 1 June 2007, p. 2; Order Designating Judge for Initial Appearance, 1 June 2007. *See also* Decision on Preliminary Motions on the Indictment Pursuant to Rule 72 of the Rules, paras. 9, 11, 14–15.

53 Decision on Motion for Joinder, 20 July 2007.

54 Prosecution's Submission of Amended Indictment with Attached Annexes A, B and C, 12 June 2007.

amend the indictment pursuant to Rule 50(A)(i)(c) and the proposed amended indictment ("Second Amended Indictment") became the operative indictment.[55] On 4 November 2009 the Prosecution filed confidentially a motion seeking leave to amend the Second Amended Indictment;[56] on 9 December 2009, the Chamber granted the motion and ordered the Third Amended Indictment ("Indictment") to be the operative indictment.[57] The Third Amended Indictment has remained the operative indictment since then.

2. Pre-Trial Briefs and Responses

20. The Prosecution filed its pre-trial brief confidentially on 28 November 2008.[58] The Prosecution's amended pre-trial brief was filed confidentially on 16 February 2010.[59] The Accused pre-trial brief was submitted on 30 September 2009 in BCS and was filed in English on 28 October 2009.[60]

3. Pre-Trial Case Management

21. Following the Accused's initial appearance, the pre-trial proceedings lasted two years, eight months, and three weeks.[61] Ten Status Conferences pursuant to Rule 65 *bis* were held between 11 December 2007 and 16 December 2009.[62] The Pre-Trial Conference pursuant to Rule 73 *bis* took place on 25 February 2010[63] and the trial started on 26 February 2010.[64] Disclosure pursuant to Rule 66(A)(ii) and Rule 68 continued throughout the pre-trial phase with the majority of disclosures being completed before October 2009.[65] The Prosecution filed its initial Rule 65 *ter* Witness List, Witness Summaries, and Exhibit List on 15 October 2008.[66] A total of 81 written decisions and orders were issued by the Chamber in the pre-trial phase.

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55 Further Appearance, T. 24 (3 July 2007).

56 Prosecution's Motion to Amend the Second Amended Indictment with Appendices A-D, confidential, 4 November 2009.

57 Decision with Reasons to Follow on Prosecution Motion to Amend the Second Amended Indictment, 9 December 2009.

58 Prosecution Filing of Pre-Trial Brief Pursuant to Rule 65*ter* (E), confidential, 28 November 2008.

59 Prosecution Pre-Trial Brief.

60 Accused Pre-Trial Brief.

61 The Accused's Initial Appearance took place on 4 June 2007. T. 1–19 (4 June 2007). The Prosecution made its Opening Statements on 26 February and 1 March 2010. T. 333–415 (26 February 2010); T. 416–508 (1 March 2010).

62 T. 52–108 (14 September 2007); T. 109–136 (11 December 2007); T. 137–171 (12 March 2008); T. 172–183 (30 June 2008); T. 184–201 (30 July 2008); T. 202–231 (31 October 2008); T. 232–249 (27 February 2009); T. 250–270 (25 June 2009); T. 271–299 (22 October 2009); T. 300–312 (16 December 2009).

63 T. 313–332 (25 February 2010).

64 T. 333 (26 February 2010).

65 T. 190–192 (30 July 2008); T. 279 (22 October 2009).

66 Prosecution Notice of Filing of 65 ter Witness List, Witness Summaries and Exhibit List with Confidential Appendices A, B and C, 15 October 2008. The Prosecution subsequently sought to amend its witness and exhibit list. Prosecution's Motion for Leave to Amend Witness List and Exhibit List, 28 November 2008; Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 *ter* with Appendices A–C, 18 March 2009. The request

C. Trial Proceedings

1. Overview

22. The total number of trial days was 242. The total number of transcript pages was 19,233. The total number of exhibits admitted was 3,495 and the total number of witnesses was 187. There were 130 witnesses who testified orally and of these 91 witnesses testified pursuant to Rule 92 *ter*. There were 52 witnesses whose evidence was admitted pursuant to Rule 92 *bis*(A) and five witnesses whose evidence was admitted pursuant to Rule 92 *quater*. The Chamber issued a total of 94 written decisions and orders during the trial.

2. Prosecution Case

23. The case for the Prosecution commenced on 26 February 2010 and concluded on 17 January 2012. The Prosecution adduced evidence from 183 witnesses in total. A total of 126 Prosecution witnesses testified orally and of these 91 testified pursuant to Rule 92 *ter*. Altogether 12 expert witnesses testified orally, and of these ten testified pursuant to Rule 92 *ter*. Six witnesses were subpoenaed pursuant to Rule 54. Three witnesses testified by video-conference link. The Chamber admitted the evidence of 52 witnesses pursuant to Rule 92 *bis*(A) and five pursuant to Rule 92 *quater*. Seventy-two witnesses were granted protective measures. A total of 2,962 Prosecution exhibits were admitted into evidence.

3. Judgement of Acquittal Pursuant to Rule 98 *bis*

24. There was no submission for a Judgement of acquittal pursuant to Rule 98 *bis*.[67]

4. Defence Case

25. On 1 March 2010, the Accused requested that his legal adviser, Mr. Aleksandar Gajić be granted permission to present legal arguments, make proposals, and raise objections in the case.[68] In addition, the Accused requested that Mr Gajić be permitted to "act in [the] courtroom", in particular, to cross-examine or examine witnesses when requested by the Accused and approved by the Chamber.[69] The Chamber decided that during the trial, Mr. Gajić, acting in the capacity of the

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was granted by decision of the Trial Chamber. Decision on Prosecution's Motion for Admission of Evidence pursuant to Rule 92 *ter* with Appendices A–C, 3 November 2009. Appendix B thereby became the operative 65 *ter* Witness List.

67 T. 17335 (29 August 2011).

68 Request to the Trial Chamber, 1 March 2010 (BCS original), 3 March 2010 (English translation), para. 1.

69 Request to the Trial Chamber, 1 March 2010 (BCS original), 3 March 2010 (English translation), para. 1. *See* Request to the Pre-Trial Chamber for Leave to File of a Reply and Reply to the Prosecution's Response of 5 March 2010, 8 March 2010 (BCS original), 10 March 2010 (English translation).

Accused's legal adviser, would have a right of audience limited to addressing the Chamber on legal issues arising during the proceedings, upon a specific request for such by the Accused being granted by the Chamber; and addressing the Chamber on administrative issues arising out of Mr. Gajić's correspondence with the Prosecution and relating to the conduct of the proceedings.[70]

26. The Defence case commenced on 23 January 2012 and concluded on 21 February 2012. The Accused adduced evidence from four witnesses. These four witnesses all testified orally; one of whom was an expert witness.[71] None of the Defence witnesses testified pursuant to Rule 92 *ter*. The Accused did not tender evidence pursuant to Rule 92 *bis*(A) or Rule 92 *quater*. A total of 533 Defence exhibits were admitted into evidence.

5. Final Briefs and Closing Arguments

27. The Chamber issued a scheduling order on the Final Trial Briefs and Closing Arguments on 14 February 2012.[72] The Prosecution filed confidentially its Final Trial Brief on 11 June 2012.[73] The Accused submitted his Final Trial Brief in BCS also on 11 June 2012, which was filed in English on 16 July 2012. The Prosecution presented its closing argument on 21 August 2012,[74] the Accused presented his closing argument on 22 and 23 August 2012,[75] and the Prosecution and the Accused presented respectively a rebuttal[76] and a rejoinder[77] on 23 August 2012. The Accused submitted his public, redacted Final Trial Brief on 1 October 2012 in BCS, which was filed in English on 4 October 2012. The Prosecution filed its public, redacted Final Trial Brief on 29 November 2012.

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70 Decision on Accused's Request to the Trial Chamber concerning Assistance of his Legal Advisor, 28 April 2010.
71 Ratko Škrbić, who the Chamber found to be an expert on military structures. T. 19258 (14 February 2012).
72 Scheduling Order on Final Trial Briefs and Closing Arguments, 14 February 2012.
73 The Prosecution filed a Corrigendum confidentially on the next day. Prosecution Final Brief (confidential).
74 T. 19368–19459 (21 August 2012).
75 T. 19460–19539 (22 August 2012); T. 19540–19545 (23 August 2012).
76 T. 19545–19557 (23 August 2012).
77 T. 19557–19561 (23 August 2012).

II. CONSIDERATIONS REGARDING EVALUATION OF THE EVIDENCE

28. In this Chapter, the Chamber will address the approaches that it has taken in evaluating the mass of evidence in the case. In section II. A., the principles applicable to the evidence adduced before the Chamber are outlined. Section II. B. will deal with certain categories of evidence, including those about which specific issues of evaluation have been raised, so as to clarify the Chamber's position on the use of the evidence concerned.

29. In evaluating some of the evidence, Judge Nyambe has drawn different inferences from the Majority. The Dissenting Opinion of Judge Nyambe presents in full the findings on which she differs from the Majority. To the degree to which the factual findings set forth in the remainder of the Judgement are inconsistent with those in the Dissenting Opinion of Judge Nyambe, they should be considered to be the findings of the Majority only. In addition, such findings in regard to the number of persons killed by Bosnian Serb Forces which are expressly stated to be those of the Chamber should be understood to be those of the Majority, with Judge Nyambe dissenting, insofar as they conflict with the dissenting position that she has taken.

A. General Principles

30. Pursuant to Article 21(3) of the Statute, the Accused has been presumed innocent until proved guilty according to the provisions of the Statute. For a finding of guilt on an alleged crime, a reasonable trier of fact must have reached the conclusion that all the facts which are material to the elements of that crime have been proven beyond reasonable doubt by the Prosecution.[78] The Accused, on the other hand, has a right not to be compelled to testify against himself or to confess guilt.[79] He is not obliged to appear as a witness in his own defence[80] or to present a Defence case. Where a Defence case is presented, the evidence adduced by the Defence is weighed along with that of the Prosecution. At the conclusion of the case the Accused is entitled to the benefit of the doubt as to whether the crime has been proven.[81]

31. The present Judgement is the "reasoned opinion in writing" which is required under Article 23(2) of the Statute and Rule 98 *ter*(C) of the Rules. The Chamber is required only to make factual findings which are essential to the determination of guilt on a particular count; and it does not need to refer to the testimony of every witness or every piece of evidence on the trial record.[82] Since

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78 *Martić* Appeal Judgement, para. 55.
79 Article 21(4)(g) of the Statute.
80 Rule 85(C) provides: "If the accused so desires, the accused may appear as a witness in his or her own defence."
81 *Martić* Appeal Judgement, para. 55; *Čelebići* Trial Judgement, para. 601.
82 *Gotovina and Markač* Appeal Judgement, para. 132; *Kvočka et al.* Appeal Judgement, para. 23; *Kupreškić et al.* Appeal Judgement, para. 39; *Kordić and Čerkez* Appeal Judgement, para. 382.

minor inconsistencies commonly occur in testimony without rendering it unreliable, it is within the discretion of the Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail.[83] If the Chamber does not refer to the evidence given by a witness, even if it is in contradiction what the Chamber finds, it is to be presumed that the Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings.[84] When the Chamber deems it appropriate in light of its obligation to present a "reasoned opinion in writing", it will refer to evidence that contradicts a finding.

32. In order to determine whether the allegations in the Indictment have been proven, the Chamber has received oral testimony of witnesses, admitted "Exhibits"—that is, documentary, video and audio evidence—and taken judicial notice pursuant to Rule 94(B) of facts adjudicated before the Tribunal. Documentary evidence includes not only written statements and transcripts admitted pursuant to Rules 92 *bis*, 92 *ter*, and 92 *quater*, but also documents mostly produced before, during or shortly after the events alleged in the Indictment.

33. Individual items of evidence, such as the testimony of witnesses or Exhibits, have been analysed in the light of the entire body of evidence adduced. Only after the analysis of all the relevant evidence has the Chamber considered that it can determine whether the evidence upon which the Prosecution relies should be accepted as establishing the existence of the facts alleged, notwithstanding the evidence relied upon by the Accused.[85]

34. The Chamber has received direct and circumstantial evidence. Direct evidence supports the truth of an assertion, that is, without an intervening inference. Circumstantial evidence is evidence of circumstances surrounding an event from which a fact at issue may be reasonably inferred.[86] Such evidence alone may be sufficient for a finding of fact beyond reasonable doubt.[87] Such a finding must be the *only* reasonable conclusion available from the evidence.[88]

35. In deciding whether to rely upon the testimony of a witness or a document the Chamber has balanced the relevant items of evidence with respect to their reliability, credibility, and authenticity, before coming to a finding about the facts established in the Judgement.

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83 *Kvočka et al.* Appeal Judgement, para. 23; *Čelebići* Appeal Judgement, paras. 481, 498; *Kupreškić et al.* Appeal Judgement, para. 32.

84 *Kvočka et al.* Appeal Judgement, para. 23.

85 *Ntagerura et al.* Appeal Judgement, para. 174; *Halilović* Appeal Judgement, para. 125. *See also* Revised Order Concerning Guidelines on the Presentation of Evidence and Conduct of Parties During Trial, 4 February 2011, Annex ("Revised Order Annex"), para. 16.

86 *Popović et al.* Trial Judgement, para. 12; *Čelebići* Appeal Judgement, para. 458.

87 *Kupreškić et al.* Appeal Judgement, para. 303.

88 *Stakić* Appeal Judgement, para. 219; *Čelebići* Appeal Judgement, para. 458; *Gotovina et al.* Trial Judgement, para. 303; *Popović et al.* Trial Judgement, para. 12.

B. Specific Categories of Evidence

1. Testimony of Witnesses

36. In evaluating the testimony of *viva voce* witnesses—whether they are credible or not—the Chamber took into account, *inter alia*, their demeanour during their testimony as well as the lapse of time since the events about which they testified and its possible impact on the reliability of their evidence.[89]

(a) Testimony of Witnesses Associated either with the Parties to the Proceedings or with the Parties to the Armed Conflict

37. The testimony of persons involved in a bitter armed conflict is often coloured by experiences and attitudes arising from that conflict.[90] The Accused has submitted that particular caution should be exercised when assessing the evidence given by the Bosnian Muslim witnesses, arguing that they have a "tendency to exaggerate or give clearly untrue and dishonest statements".[91] The Chamber is aware of the general tendency of witnesses associated with a party to a conflict to give testimony that supports its perceived interests. The Chamber has carefully observed the demeanour of these witnesses during their testimony, and taken into consideration relevant factors—for example, the effect of stress or fear on their accounts, the lapse of time, as well as cultural factors.[92]

38. The Accused gives particular attention in his Final Brief to "Prosecutor investigators", including Jean-René Ruez, Dean Manning, Tomasz Blaszczyk, Erin Gallagher, Dušan Janc, and Stefanie Frease.[93] The Accused submits that even in those instances where it seems that a high standard of objectivity has been demonstrated, the reports of these witnesses could not serve as the only basis for establishing the facts.[94] They were called and testified about their direct involvement and knowledge of investigations of the crimes that the Prosecution is to prove beyond reasonable doubt, ranging from provenance of documents used by the Prosecution to forensic evidence. They were cross-examined and their reports were tendered and admitted into evidence. In the Chamber's view, their status as current or former OTP investigators alone does not render their testimony and reports unreliable. In determining what weight is to be given to each witness of this category, the

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89 *See, e.g., Popović et al.* Trial Judgement, para. 10; *Đorđević* Trial Judgement, para. 13.
90 *See, e.g., Đorđević* Trial Judgement, paras. 15–17.
91 Accused Final Brief, paras. 195–196, 198–203 (quotation at para. 196); Accused Final Brief (confidential), paras. 197, 204–207.
92 *See, e.g., Limaj et al.* Trial Judgement, para. 15.
93 Accused Final Brief, paras. 177–183. The Accused submits that Richard Butler and Ewa Tabeau "should be also classified as investigators." Accused Final Brief, para. 178. However, they gave evidence before the Chamber as experts on military structure and demography, respectively.

Chamber has taken into consideration, *inter alia*, their expertise and knowledge of the investigation that they have been involved in, as well as other relevant evidence. In short, the Chamber does not accept the position taken by the Accused in regard to these witnesses, though it has exercised caution in evaluating their evidence in view of their association with a party to the proceedings. In addition, the Chamber is mindful of the fact that they were not eye-witnesses or in other ways direct observers of the events that took place during the period of time to which the charges in the Indictment relate.

(b) Expert Witnesses

39. The Chamber has received evidence from expert witnesses called by both Parties.[95] In weighing this evidence, the Chamber has considered factors such as the professional competence of the expert, the methodologies used by the expert and the reliability of the findings made in light of these factors and other evidence accepted by the Chamber.[96]

40. Some expert witnesses have associations of varying nature with one of the parties. That alone does not make them unreliable. The nature of the association and other relevant factors have been evaluated in assessing their evidence.

41. In his Final Brief, the Accused specifically challenges the weight to be given to the evidence of Richard Butler.[97] The Chamber has found him to be an expert witness, but the determination of

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94 Accused Final Brief, para. 177.

95 The Prosecution called the following expert witnesses: Richard Butler, Ewa Tabeau, Kathryn Barr, John Clark, William Haglund, Christopher Lawrence, Richard Wright, Jose Baraybar, Johan de Koeijer, Freddy Peccerelli, Thomas Parsons and Michael Hedley. The Accused called one expert witness, Ratko Škrbić, who the Chamber found to be an expert on military structures. T. 19258 (14 February 2012).

96 *Milutinović et al.* Trial Judgement, Vol. I, para. 40. *See also Martić* Trial Judgement, para. 29; *Blagojević and Jokić* Trial Judgement, para. 27; *Vasiljević* Trial Judgement, para. 20. In weighing the evidence from expert witnesses the Chamber has, in particular, considered corroboratory evidence of a different nature. For example, the evidence of handwriting expert Kathryn Barr by which the writing of Dragan Jokić has been identified in the Zvornik Brigade Duty Officer Notebook has been corroborated by evidence of other witnesses and documentary evidence. *See infra* para. 73.

97 Accused Final Brief, paras. 185–188. The Accused argues that Butler's reports cannot be treated as expert witness reports on the grounds that they were not disclosed pursuant to Rule 94 *bis*. Accused Final Brief, para. 185. This submission is not substantiated. The Accused was on notice of the Prosecution's intention to call Butler as an expert witness and of its intention to tender his reports. Prosecution Notice of Filing of 65 *ter* Witness List, Witness Summaries and Exhibit List, 15 October 2008, Appendix B (confidential), pp. 4–5. The Chamber notes that Butler's reports were admitted without objection from the Accused. Richard Butler, T. 16291–16292 (7 July 2011); Ex. P02470 (VRS Corps Command Responsibility Report); Ex. P02471 (Srebrenica Military Narrative – Operation Krivaja 95'); Ex. P02472 (VRS Brigade Command Responsibility Report); Ex. P02473 (Srebrenica Military Narrative (Revised) – Operation Krivaja 95'); Ex. P02474 (Chapter Eight Analytical Addendum to Srebrenica Military Narrative (revised)); Ex. P02475 (VRS Main Staff Command Responsibility Report). The Chamber further notes that during cross-examination of this witness, the Accused appears to have implicitly accepted the expert status of the witness. Richard Butler, T. 16912, 16914, 16923 (20 July 2011), T. 16973 (21 July 2011), T. 17081 (22 August 2011), T. 17192, 17235 (24 August 2011), T. 17279, 17286 (25 August 2011) T. 17341, 17361, 17377, 17399 (29 August 2011). Also, the Chamber has been clear, in its references throughout the testimony, that he was giving evidence as an expert. Richard Butler, T. 16368 (8 July 2011), T. 16397 (11 July 2011), T. 16894, 16911 (20 July 2011), T. 17487 (31 August 2011).

his status as such is only a first step; his evidence must then be evaluated according to the criteria just outlined.[98] The Chamber notes Butler's experience in military intelligence.[99] The Chamber stresses, in this regard, that while it deemed Butler to be an expert witness, there are other witnesses who will also assist the Chamber in understanding matters, such as the command structure of the VRS, on which he has testified. The Chamber moreover accepts that caution is also needed in the evaluation of Butler's evidence in view of his former association with a party to these proceedings.[100] Finally, his testimony will, of course, be analysed in the light of the entire body of evidence adduced.

(c) Testimony of Persons Convicted of Crimes Arising from Events Alleged in the Indictment

42. The Chamber has heard evidence from several witnesses who have been convicted by the Tribunal for crimes arising from events which are alleged in the Indictment as the basis for the charges against the Accused. In its approach to the testimony of these witnesses the Chamber has taken note of the following guidance from the Appeals Chamber:

> [I]t is well established in the jurisprudence of both *ad hoc* Tribunals that nothing prohibits a Trial Chamber from relying on evidence given by a convicted person, including evidence of a partner in crime of the person being tried before the Trial Chamber. Indeed, accomplice evidence, and, more broadly, evidence of witnesses who might have motives or incentives to implicate the accused is not *per se* unreliable, especially where such a witness may be thoroughly cross-examined; therefore, reliance upon this evidence does not, as such, constitute a legal error. However, "considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, a Chamber, when weighing the probative value of such evidence, is bound to carefully consider the totality of the circumstances in which it was tendered". As a corollary, a Trial Chamber should at least briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused; in this way, a Trial Chamber shows its cautious assessment of this evidence. (footnotes omitted)[101]

43. With the exception of Miroslav Deronjić, all the witnesses who have been convicted by the Tribunal for crimes arising from events alleged in the Indictment testified *viva voce*. The Chamber was able as a result to observe their demeanour. Their evidence has been evaluated on the basis of the circumstances in which it was given and the evidence in the case as a whole. In attributing weight to their evidence, the Chamber has evaluated it individually, paying due regard to the possibility that they had motives for implicating the Accused. Since so much of the evidence in the case is multi-faceted and overlapping, it has been possible to corroborate sections of the evidence of each of these witnesses. For these reasons parts of their testimony have been accepted.[102]

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98 These factors are ones such as the professional competence of the expert, the methodologies used by the expert and the reliability of the findings made in light of these factors and other evidence accepted by the Chamber. *See supra* para. 39.

99 Richard Butler, T. 16274–16280 (7 July 2011); Ex. P02469.

100 *See supra* para. 38.

101 *Krajišnik* Appeal Judgement, para. 146 (quoting *Niyitegeka* Appeal Judgement, para. 98).

102 *See also Krajišnik* Appeal Judgement, paras. 147–148.

44. The Accused challenges the transcript of the testimony of Deronjić on the grounds that, *inter alia*, he had a strong motive to give untruthful and dishonest answers.[103] The Chamber notes that on 30 September 2003 Deronjić pleaded guilty to an indictment forming part of a plea agreement.[104] He testified in *Prosecutor v. Blagojević and Jokić* on 21 and 22 January 2004. A few days later on 27 January 2004, he testified in his own case.[105] He was sentenced to a term of ten years of imprisonment on 30 March 2004.[106] Pursuant to Rule 92 *quater* the Chamber admitted transcripts of his testimony in *Blagojević and Jokić*.[107] In other words, the transcripts admitted were of testimony he gave before he testified in his own case and before sentence was passed on him and, therefore, he had an incentive to adapt his testimony to minimise his involvement in view of the upcoming important phases of his own case. In its Decision admitting Deronjić's testimony, the Chamber found that the inconsistencies in his testimony, which must be considered when assessing the weight to be attributed to it, did not preclude its admission.[108] In light of all these factors, particular caution has been exercised in considering the weight to be given to Deronjić's testimony and his evidence on matters of substance has only been accepted where it has been corroborated.

2. Documentary Evidence

45. Admitting a document as evidence does not in itself mean that the Chamber considers the document to be an exact representation of the facts or that it accepts the content of the document as true; factors such as the authenticity and proof of the identity of the document's source are significant elements in the Chamber's determination of the weight to give the evidence.[109]

(a) Prior Testimony and Statements Made out of Court

46. The Chamber has admitted pursuant to Rule 92 *bis*(A) and Rule 92 *quater* transcripts of testimony and written statements of witnesses who did not testify before the Chamber.[110] The

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103 Accused Final Brief, para. 168. The Accused submits that plea agreements cannot constitute either grounds for judicial notice or a source of reliable information. Accused Final Brief, para. 165. The Chamber has treated such agreements with the utmost caution.

104 *Deronjić* Sentencing Trial Judgement, paras. 18–19.

105 *Deronjić* Sentencing Trial Judgement, para. 29.

106 *Deronjić* Sentencing Trial Judgement, p. 77 (by majority); *Deronjić* Sentencing Appeal Judgement, p. 56 (affirming unanimously the sentence imposed by the Trial Chamber).

107 Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 25 November 2009 ("92 *quater* Decision").

108 92 *quater* Decision, para. 47.

109 Revised Order Annex, para. 17. *See also Milutinović et al.* Trial Judgement, Vol. I, para. 56. A further principle that the Chamber has followed is that the fact that a document has neither a signature nor a stamp is not in itself a reason to find that it is not authentic. Revised Order Annex, para. 19. *See also Popović et al.* Trial Judgement, para. 14.

110 Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 25 November 2009; Decision on Prosecution's Motion for Admission of Written Evidence Pursuant to Rules 92 *bis* and 94 *bis*, 7 July 2010; Decision on Prosecution Motion for Admission of Written Evidence of Behara Krdžić Pursuant to

evidence of transcripts and statements admitted pursuant to Rule 92 *bis*(A) goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment; whereas Rule 92 *quater*(B) provides that if the evidence goes to proof of the acts and conduct of the accused as charged in the indictment, this may be a factor against the admission of such evidence or that part of it. In regard to evidence admitted pursuant to each of these two provisions, the Chamber notes the principle in the jurisprudence of the Tribunal that evidence which has not been cross-examined and goes to the acts and conduct of the Accused or is pivotal to the Prosecution case will require corroboration if used to establish conviction.[111]

47. The Chamber has also admitted pursuant to Rule 92 *ter*(A) written statements and transcripts of prior testimony of *viva voce* witnesses. Such evidence has been admitted on condition that, *inter alia*, the witness is available for cross-examination and any questioning by the Judges.[112] It may include evidence that goes to proof of the acts and conduct of the accused, as charged in the indictment.[113]

48. Some statements of witnesses which have not been admitted pursuant to Rule 92 *ter*(A) have nevertheless been admitted, if, with a view to refreshing witnesses' memory or testing or challenging their testimony, the Parties have put to them extracts from these statements.[114] In such instances the Chamber has mainly admitted the statements for this limited purpose and not as evidence of the truth of their contents.[115]

(b) Evidence that is the Basis for the Identification of the Srebrenica-Related Missing through DNA

49. In subsequent parts of the Judgement findings are made on numbers of persons killed in various incidents alleged in the Indictment. These findings have largely been derived from the identification of Srebrenica-related missing through DNA analysis. This section will explain the

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Rule 92 *bis*, 7 September 2011; Decision on Prosecution's Motion to Admit the Evidence of Milenko Lazić Pursuant to Rule 92 *quater*, confidential, 15 September 2011; Decision on Prosecution's Motion to Admit the Evidence of Novica Simić Pursuant to Rule 92 *quater*, confidential, 1 November 2011; Decision on Prosecution's Request for Reconsideration of the Admission of Written Evidence of Witness No. 39 Pursuant to Rule 92 *bis*, 4 November 2011. The Accused did not seek admission of evidence pursuant to these Rules.

111 *Prosecutor v. Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006, para. 20. *See also Popović et al.* Trial Judgement, para. 60; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007, para. 53.

112 Rule 92 *ter*(A)(ii).

113 Rule 92 *ter*(B).

114 *E.g.*, PW-008, T. 8906–8915, 8919 (14 December 2010) (regarding Ex. D00140 (confidential)); Pieter Boering, T. 8984–8986, 9004–9017, 9021–9027 (15 December 2010), T. 9083–9085, 9089–9093 (16 December 2010) (regarding Ex. D00146); PW-016, T. 9379–9385, 9391–9392 (3 February 2011) (regarding Ex. D00152 (confidential)).

115 *See, e.g.*, *Popović et al.* Trial Judgement, para. 67.

evidential basis for deciding who the "Srebrenica-related missing" are and for identifying them by DNA analysis of remains recovered in exhumations.

(i) Demographic Data Used to List the Srebrenica-Related Missing

50. Over the course of several years the OTP has maintained lists of Srebrenica-related missing which it has updated on an ongoing basis.[116] Its most recent report is the 2009 Integrated Report on Srebrenica Missing Including a Progress Report on DNA-Based Identification ("2009 Integrated Report").[117] Associated with it is a list of Srebrenica-related missing ("2009 List of Missing").[118] The OTP lists of Srebrenica-related missing have been integrated with DNA-based data provided by the International Commission on Missing Persons ("ICMP").[119] This material has been used in deciding who the Srebrenica-related missing are for the purposes of findings elsewhere in the Judgement.

51. Srebrenica-related missing have been defined as persons missing in connection with the fall of the Srebrenica enclave on 11 July 1995.[120] They have been identified through information provided by the International Committee of the Red Cross ("ICRC"), ICMP, Physicians for Human

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116 Ex. P01776, pp. 1–2, 5–7.

117 Ex. P01776; Ewa Tabeau, T. 11405–11406 (16 March 2011). The 2009 Integrated Report is dated 9 April 2009 and its authors are Helge Brunborg, Ewa Tabeau and Arve Hetland. Ex. P01776, p. 1.

118 Ex. P01777 (confidential) (2009 Progress Report on the DNA-Based Identification by ICMP, dated 9 April 2009).

119 Ex. P01776, pp. 1–2, 5–7. Dušan Janc made extensive use of data underpinning these lists in the preparation of his report, "Update to the Summary of Forensic Evidence – Exhumation of the Graves and Surface Remains Recoveries related to Srebrenica and Žepa – April 2010". Ex. P00170; Ex. P00167. Also, Dean Manning presented data on DNA-identified Srebrenica-related and other forensic data in his reports. Ex. P01915, Ex. P01916, Ex. P01825. The Accused objects that Janc and Manning have no expertise in DNA analysis and that their reports cannot be considered a basis for drawing any inference about the facts while applying the required standard of proof. Accused Final Brief, para. 257. The Chamber considers that this objection involves a misunderstanding of the nature of these reports. Certainly neither Janc nor Manning have specific expertise in relation to DNA analysis, but both have a compendious knowledge of the forensic data bearing upon the allegations in the Indictment and access to the relevant documentation. Their reports present the data in a simplified manner while at the same time showing the extent to which they have relied upon expert analysis.

120 Ex. P01776, p. 34; Ewa Tabeau, T. 11487 (17 March 2011). Annex 2 of the 2009 Integrated Report gives the following definitions that were applied in the identification of the Srebrenica-related missing:

> *Date of disappearance*: This phrase refers to the date a missing person was last seen alive. This is, however, not necessarily the date the person may have been killed. Records with a reported disappearance or death between 11 July and 31 August 1995, or immediately before but not earlier than 1 July, were considered the most relevant, but also records with disappearances between 1 September and 31 December 1995 from locations in or near the enclave, were included in our analysis.
>
> *Place of disappearance*: This phrase refers to the place a missing person was last seen alive. Again, this is not necessarily a reference to where the person may been killed. [...] For this project a list was compiled of "missing"-locations related to the fall of the enclave. This compilation was done in close co-operation with investigators knowledgeable of refugee flows from the enclave, and after consulting with people from the area on difficult cases. For the OTP 2005 list the municipalities covering these locations, together with the date of disappearance, was used to decide whether a person disappeared in relation to the fall of Srebrenica. The following municipalities were considered relevant: Bijeljina, Bratunac, Han Pijesak, Kalesija, Kladanj, Rogatica, Šekovići, Srebrenica, Vlasenica and Zvornik. [...] [Three municipalities in Serbia bordering the Srebrenica area] were also considered relevant.

Rights ("PHR"), and the BiH authorities.[121] The census and voters' lists were also used to crosscheck the data.[122] Among the sources of the missing, the ICRC list was the major one.[123] The ICRC has a standardised questionnaire that is used to register missing persons, and it applies a very selective method when accepting reports on the missing.[124] The PHR list of missing persons was also used,[125] although its component was very small.[126]

52. Helge Brunborg and Ewa Tabeau, the demographers who prepared the lists of Srebrenica-related missing, described procedures that they followed to enhance reliability: checks were made for duplicates;[127] matches were made with the voters' lists to see whether there were any survivors and nine persons were deleted as a consequence;[128] to ensure neutrality lists of the missing maintained by parties to the conflict were not used.[129]

53. The demographic profile of the Srebrenica-related missing resulting from the work of Brunborg and Tabeau was found to correspond to what is independently known of those who were separated at Potočari or captured from the column.[130]

54. In response to a report by Svetlana Radovanović, a demographer who argued that there were duplicates and errors in the lists of the Srebrenica-related missing, Brunborg produced a rebuttal report in 2004.[131] Brunborg found that Radovanović was correct in some of the identified duplicates which he and his colleagues had also identified but had failed to remove due to an oversight.[132] Brunborg testified that out of the ten cases identified by Radovanović, eight were duplicates and five had been previously identified by Brunborg and his colleagues.[133] Corrections were made in

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121 Ex. P01776, pp. 1–2. *See also* Ewa Tabeau, Ex. P02071, PT. 21044 (5 February 2008); Ewa Tabeau, T. 11407 (16 March 2011); Helge Brunborg, Ex. P01775, PT. 6782–6783 (1 February 2007); Helge Brunborg, T. 9628–9631 (9 February 2011).

122 Ex. P01776, pp. 2, 87–88. *See also* Ewa Tabeau, Ex. P02071, PT. 21044–21045, 21059 (5 February 2008); Ewa Tabeau, T. 11408–11409 (16 March 2011); Helge Brunborg, Ex. P01775, PT. 6788–6789, 6793 (1 February 2007); Helge Brunborg, T. 9628, 9631 (9 February 2011).

123 Ewa Tabeau, T. 11407 (16 March 2011), T. 11447 (17 March 2011).

124 Ewa Tabeau, T. 11448, 11482 (17 March 2011). For example, only family members are accepted as informants to the ICRC, which in Ewa Tabeau's opinion makes the ICRC procedure and record of information highly reliable. Ewa Tabeau, T. 11448 (17 March 2011).

125 Ewa Tabeau, Ex. P02071, PT. 21044 (5 February 2008).

126 Ewa Tabeau, T. 11407 (16 March 2011).

127 Ewa Tabeau, Ex. P02071, PT. 21035 (5 February 2008).

128 Helge Brunborg, T. 9633, 9637 (9 February 2011).

129 Helge Brunborg, Ex. P01775, PT. 6799–6800 (1 February 2007).

130 *See infra* n. 2545.

131 Helge Brunborg, Ex. P01775, PT. 6809–6810 (1 February 2007); Helge Brunborg, T. 9647–9648, 9650 (9 February 2011); Ex. P01792.

132 Helge Brunborg, T. 9650 (9 February 2011).

133 Helge Brunborg, T. 9702 (10 February 2011). The rebuttal report stated that all of Radovanović's five "certain" examples of duplicates were indeed duplicates that were also marked as such by the OTP in 2000 and that of her five "highly likely" examples, however, only three were found to be duplicates, and two were not duplicates. Ex. P01792, p. 17.

both Brunborg's report in 2005 and the 2009 Integrated Report.[134] Brunborg testified that none of the other criticisms made by Radovanović were justified.[135]

55. The Chamber concludes that despite human error resulting in minor inaccuracies in the past the lists of Srebrenica-related missing are based on sound data and are reliable.

(ii) DNA Identification of Srebrenica-Related Missing

56. The ICMP began its work in BiH in 2000[136] taking DNA samples from recovered human remains, and comparing these with blood samples from the family members of the Srebrenica-related missing.[137] Through this process of DNA comparison, the remains of the Srebrenica-related missing have been identified.[138] The term "identified persons" relates to the human remains exhumed from gravesites in the territory of Srebrenica municipality and neighbouring municipalities in Eastern Bosnia and for which the DNA-matching reports are available.[139]

57. Thomas Parsons, who is Director of Forensic Sciences for the ICMP,[140] described in considerable detail the process by which the ICMP conducted DNA analysis of human remains.[141] The ICMP enjoys diplomatic privileges and immunities in their headquarters agreement in Bosnia, and therefore is able to provide assurances of data protection and independence.[142] It has been accredited by the Deutsche Akkreditierungsstelle Chemie, which is authorised in a number of international agreements to provide accreditation to the ISO 17025 standard.[143] The Chamber is

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134 Helge Brunborg, T. 9651 (9 February 2011).

135 Helge Brunborg, T. 9652 (9 February 2011). With regard to Radovanović's statement that there were fictitious persons in the lists, Brunborg stated that because he found the persons mentioned by Radovanović in the 1991 Census and it was quite unlikely that they were fictitiously enumerated he considered that he had refuted her assertion. Furthermore, as regards Radovanović's assertion that survivors had been included in the lists, Brunborg testified that this claim was checked and no survivors were identified apart from nine possible survivors in the 1997/1998 voters' lists. Helge Brunborg, Ex. P01775, PT. 6811 (1 February 2007). *See also* Ex. P01792, pp. 13–16.

136 Helge Brunborg, Ex. P01775, PT. 6785 (1 February 2007).

137 Helge Brunborg, T. 9631 (9 February 2011); Dušan Janc, T. 1946 (18 May 2010).

138 Helge Brunborg, T. 9639–9640 (9 February 2011); Thomas Parsons, T. 10365 (24 February 2011); Thomas Parsons, Ex. P01936, PT. 20867 (1 February 2008).

139 Ewa Tabeau, T. 11406 (16 March 2011); Ex. P01776.

140 Thomas Parsons, Ex. P01936, PT. 20867 (1 February 2008); Thomas Parsons, T. 10404 (24 February 2011).

141 The Chamber attaches little weight to the submission of the Accused that the ICMP cannot be held to account for its work. Accused Final Brief, para. 238. The ICMP's work is highly regarded internationally as among the most successful human identification programmes. Thomas Parsons, T. 10368 (24 February 2011). In Parsons's opinion, the DNA identification and matching process conducted by the ICMP is reliable to a reasonable degree of scientific certainty. Thomas Parsons, Ex. P01936, PT. 20879–20880 (1 February 2008). The ICMP is subject to oversight in important ways. The error leading to the delay in the DNA identification of Avdo Palić does not point to any current systemic flaw in the operation of the ICMP. *See infra* n. 2924.

142 Thomas Parsons, T. 10370–10371 (24 February 2011).

143 Thomas Parsons, Ex. P01936, PT. 20891 (1 February 2008); Thomas Parsons, T. 10489 (25 February 2011). The ISO 17025 standard is the most widely respected standard for accreditation relating to scientific and methodological processes. Thomas Parsons, T. 10489 (25 February 2011).

satisfied that the reports generated by ICMP on the basis of the DNA analysis can be fully relied upon for the purposes of the present Judgement.[144]

(iii) Numbers of Srebrenica-Related Missing Identified through DNA

58. In its findings on the numbers of persons recovered from gravesites, the Chamber has used the numbers maintained by the OTP of Srebrenica-related missing identified by DNA analysis. It has taken this approach first because of the reliability of these data, as outlined above. Second, there is a large and ever-increasing overlap between the demographically based list of Srebrenica-related missing and the DNA identification data provided by ICMP.[145] As Tabeau put it, the two perspectives—demography and DNA analysis—corroborate each other.[146] Third, since there are grounds for believing that in many instances the remains of the same Srebrenica-related missing are present in more than one gravesite, the use of DNA identification will eventually lead to a more accurate count of the numbers of persons in the graves concerned.[147] In making findings as to the numbers of Srebrenica-related missing recovered from particular gravesites, the Chamber is not addressing the question of the cause of their death at this stage.

59. Tabeau wrote a report on allegations that 58 of those in the OTP lists of Srebrenica-related missing had died of natural causes and that their deaths were unrelated to the fall of Srebrenica.[148]

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144 The Accused submits that the DNA method cannot be used on its own to determine identity, because a DNA match requires endorsement from a pathologist before a death certificate is signed. Accused Final Brief, paras. 233, 271–272. The Chamber does not accept this submission, because it rests on an administrative practice, which cannot as such undermine the validity of DNA identification, for which there is strong evidence. The Accused also cites articles in the Proceedings of the American Academy of Forensic Sciences, which establish that traditional methods of anthropological assessment are still necessary. Accused Final Brief, paras. 231–232; Ex. P01994; Ex. P01993. Parsons in fact agreed that concordance of DNA and non-DNA data was important and was one of the pillars of the ICMP identification process. Thomas Parsons, Ex. P01936, PT. 20908 (1 February 2008).

145 Helge Brunborg, T. 9639–9641 (9 February 2011); Ex. P01779. *See also* Ewa Tabeau, T. 11479–11480 (17 March 2011) (testifying that as of 2009 66% of the Srebrenica-related missing were confirmed as DNA-identified cases and were buried in mass graves and other graves in the Srebrenica region).

146 Ewa Tabeau, T. 11406 (16 March 2011).

147 Dušan Janc, T. 1989–1991, 1998 (18 May 2010). Previously, the anthropological assessment of remains was used. The Minimum Number of Individuals or MNI was calculated on the basis of the numbers of particular bones that were found. Ex. P01915, p. 3. Janc explained that this method was less effective where there were secondary graves in which bones were recovered of some people whose bones were also found in primary graves. In such cases there was a danger of double-counting. Dušan Janc, T. 1989–1991, 1998 (18 May 2010).

148 Ewa Tabeau, T. 17510–17511 (1 September 2011); Ex. P02586; Ex. D00165. The allegations were based on a book by Milivoje Ivanišević called "Srebrenica 1995: In Pursuit of Truth". *Ibid.* Tabeau was also aware of the discussion in the media in BiH of the 500 survivors that were allegedly included in the Bosnian Book of Death, which is a database on the victims of the war in BiH compiled by a local NGO called Research and Documentation Centre, headed by Mirsad Tokača. The OTP requested a list of these 500 survivors in order to be able to cross-reference it with OTP sources. Tokača replied that he was unable to provide the list because his database was made in such a way that any record deleted from the database at some point could not be recovered anymore. Tokača clarified that his NGO had identified that the 500 survivors of Srebrenica were immediately excluded from the records of the database. In the end, Tokača sent OTP a list of 240 names. Tabeau found that one of the 240 was confirmed in the DNA identification records of ICMP. He had been incorrectly classified as a survivor because he appeared in a government register of internally displaced persons, having been reported at some point as a displaced person. The other 239 names were not on the list of missing and had not been identified by DNA. Ewa Tabeau, T. 11422–11423 (16 March 2011), T. 11452–11457 (17 March 2011).

She did not see any reason to remove anyone from the OTP lists.[149] On the basis of cross-referencing with the OTP lists, she found that of the 58 persons named 52 were missing and identified by DNA, 4 were missing and not yet identified and 2 were different people from those on the OTP lists.[150]

60. There are inconsistencies between DNA-based identification of Srebrenica-related missing and court declarations regarding the deaths of the same persons; however, the Chamber finds that in such cases the DNA-based identification is more reliable. For example, when the Accused presented Tabeau with the details of two individuals in the 2009 List of Missing for whom there was a court decision implying that the individual concerned had not died in the aftermath of the fall of Srebrenica but before this, she indicated that further information would be needed to establish the reasons for the variation.[151] She also testified that court declarations usually are not based on precise information about the death, because the person is missing and so the circumstances regarding the date, the place and the cause of death are unknown.[152]

61. In his Final Brief, the Accused submits that inconsistency with ABiH records of soldiers and other persons associated with the ABiH who were killed gives rise to reasonable doubt about the accuracy of the ICMP data.[153] The Chamber finds that this argument is not grounded. Altogether 220 of those on the 2005 OTP list of Srebrenica-related missing had, according to ABiH records, dates of death before July 1995.[154] However, 140 of them were identified by ICMP in Srebrenica-related graves;[155] 127 were the subject of records that were corrected by the Bosnian authorities in line with the dates of death in the OTP list;[156] and 38 remain undecided because they have not been identified by DNA and no clarification in respect of them has yet been received from the Bosnian authorities.[157] The scale of the inconsistency is small.[158] Clarification by the Bosnian authorities and findings by the ICMP show that most of the 220 cases were indeed Srebrenica-related.[159] Moreover, the Chamber agrees with the assessment that the reporting of cases in ABiH

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149 Ewa Tabeau, T. 17511–17512, 17533–17534 (1 September 2011).
150 Ewa Tabeau, T. 11436 (16 March 2011), T. 17529 (1 September 2011); Ex. P02586, p. 2.
151 Ewa Tabeau, T. 17504 (private session), 17504–17507, 17507 (private session), 17507–17508, 17508 (private session), 17508–17509, 17509 (private session), 17509–17520 (1 September 2011); Ex. P01777 (confidential); Ex. D00316; Ex. D00317. *See also* Accused Final Brief, paras. 279, 282–285; Accused Final Brief (confidential), paras. 280, 281.
152 Ewa Tabeau, T. 17506 (1 September 2011).
153 Accused Final Brief, paras. 276–277.
154 Ex. P01776, pp. 95, 97, 106–110; Ex. P02082; Helge Brunborg, T. 9747 (10 February 2011), T. 10111 (17 February 2011); Ewa Tabeau, T. 11424, 11426–11427 (16 March 2011), T. 11465 (17 March 2011).
155 Ex. P01776, p. 95; Helge Brunborg, T. 9747 (10 February 2011), T. 10112 (17 February 2011).
156 Ex. P01776, p. 95; Helge Brunborg, T. 9747 (10 February 2011), T. 10112 (17 February 2011); Ewa Tabeau, T. 11431–11433 (16 March 2011).
157 Ex. P01776, p. 95; Helge Brunborg, T. 9747 (10 February 2011), T. 10112 (17 February 2011).
158 Ex. P01776, p. 95; Helge Brunborg, T. 10111 (17 February 2011).
159 Helge Brunborg, T. 9747 (10 February 2011).

records is not highly reliable since attention is mainly given to whether the person in question has died, with details of the death being less important.[160]

62. On the basis of the above considerations, the Chamber has attached probative value to the lists that the OTP has maintained of Srebrenica-related missing integrated with DNA identifications in the findings that it will make in regard to the events after the fall of Srebrenica.

(c) Intercepted Communications

63. The Chamber has admitted a large number of records of intercepted communications ("intercepts") produced by the Bosnian Muslim side. It has heard the *viva voce* testimony of 17 intercept operators,[161] two of their supervisors,[162] and Stefanie Frease, a former OTP research officer and analyst,[163] all of whom have described the procedures that were followed in producing the intercepts that have been admitted.

64. Methods that promoted reliability were used to record intercepted communications.[164] This was reflected in the specific instructions and practices that the intercept operators followed in intercepting and recording communications.[165]

65. Independent corroboration of the intercepts was provided by documents captured from the VRS, notes taken by UN officials, telephone books obtained in the RS, and aerial images.[166] Particularly striking are the cases in which records made by the Bosnian Muslim side of intercepted communications are essentially consistent with the records made by others of what are evidently the same communications. These others include the Croatian authorities[167] and UNPROFOR.[168] In one case an intercept made by the ABiH of a conversation between Nicolai and the Accused was

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160 Ex. P01776, p. 94. Tabeau referred to these inconsistencies as due to omissions in updating information which occur in wartime. Ewa Tabeau, T. 11429–11430 (16 March 2011).

161 PW-025, PW-027, PW-026, PW-048, PW-047, PW-041, PW-038, PW-033, PW-050, PW-035, PW-030, PW-042, PW-045, PW-043, PW-040, PW-049 and PW-076.

162 PW-024 and PW-032.

163 Stefanie Frease, T. 4971 (7 September 2010).

164 Stefanie Frease, Ex. P00783, PT. 6388–6389 (25 January 2007); Stefanie Frease, T. 5029 (7 September 2010). *See, e.g.*, PW-025, Ex. P00292 (confidential) (20 January 2007), p. 2; PW-048, Ex. P00363, PT. 7409 (20 February 2007); PW-048, T. 2595–2596 (9 June 2010); PW-047, T. 2619, 2621–2622 (10 June 2010). *See also* Adjudicated Facts 596, 604.

165 Stefanie Frease, T. 5033 (7 September 2010); Stefanie Frease, Ex. P00783, PT. 6388–6389, 6392 (25 January 2007), PT. 8059 (2 March 2007), PT. 8123 (2 March 2007). *See also* Adjudicated Facts 598, 599. There was material conformity between printouts and the original notebooks of the intercepted communications. Stefanie Frease, Ex. P00783, PT. 6374 (25 January 2007). *See also* Adjudicated Fact 601.

166 Stefanie Frease, T. 5225 (10 September 2010). *See also* Stefanie Frease, Ex. P00783, PT. 7840–7842 (27 February 2007); Adjudicated Fact 602.

167 *E.g.*, Stefanie Frease, T. 5104–5107, 5126 (8 September 2010); Ex. P00786; Ex. P00306 (confidential); Ex. P00314 (confidential). *See also* Stefanie Frease, T. 5131–5134 (8 September 2010); Ex. P00775; Ex. P00315 (confidential).

168 *E.g.*, Stefanie Frease, T. 5110–5125 (8 September 2010); Ex. P00310 (confidential); Ex. P00698; Ex. P00682.

corroborated by both a Croatian intercept and an UNPROFOR report of the same conversation.[169] There are sometimes variations of a few minutes in the times given by the different sources for the same intercepted conversation.[170] According to Frease, this is attributable to the different possible times that could be associated with an intercept—for example, the time when a conversation started, the time when it ended or when it was typed and sent to the intercept operators' headquarters.[171]

66. The OTP first received intercept material from the ABiH in March 1998.[172] Frease testified that there is a theoretical possibility that it was in some way tampered with before it came into its possession.[173] However, the overwhelming weight of the evidence is in favour of the reliability and authenticity of the intercepts, and the Chamber is satisfied that, as a whole, the intercepts have a high degree of validity in relation to the conversations they purport to record.

(d) Aerial Imagery

67. The Chamber has received a number of aerial images from the Prosecution in support of the presence at particular locations of gravesites and reburial activities,[174] buildings and vehicles,[175] large groups of prisoners,[176] and bodies.[177]

68. These aerial images have been provided by the U.S. Government and disclosed to the Prosecution pursuant to Rule 70.[178] The U.S. Government made it clear that the Prosecution "is not authorized to discuss in courtroom proceedings any information relating to the technical or analytical sources, methods, or capabilities of the systems, organizations, or personnel used to collect, analyze, or produce these imagery-derived products".[179]

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169 Stefanie Frease, T. 5126–5130 (8 September 2010); Ex. P00311 (confidential) (intercept by the ABiH dated 9 July at 6:15 p.m. of a conversation between "UNPROFOR General Nicolai" and "probably Talimir"); Ex. P00700 (audiotape of Ex. P00311); Ex. P00699 (Croatian intercept dated 9 July 1995 at 5:55 p.m. between "General Micoliai" of UNPROFOR and "General Tolimir"); Ex. P00680 (UNPROFOR Notes of a telephone conversation at 5:50 p.m. between Nicolai and Tolimir). There are certain points present in each of the three records of the content of conversation. *Ibid.*

170 *E.g.*, Ex. P00786 (intercept by the Croatian authorities with the time given as 3:17 p.m. on 8 July); Ex. P00306 (confidential) (intercept of the same conversation by the Bosnian Muslim side with the time given as 3:30 p.m. on 8 July).

171 Stefanie Frease, T. 5106 (8 September 2010). *See also* Stefanie Frease, T. 5149 (8 September 2010).

172 Stefanie Frease, Ex. P00783, PT. 6087–6088 (19 January 2007); Stefanie Frease, T. 5213 (10 September 2010).

173 Stefanie Frease, Ex. P00783, PT. 7820–7821 (27 February 2007).

174 *See, e.g.*, Ex. P01840; Ex. P01841; Ex. P01842; Ex. P01843; Ex. P01846; Ex. P01848; Ex. P01849; Ex. P01851; Ex. P01852; Ex. P01853; Ex. P01855; Ex. P01856; Ex. P01858; Ex. P01859.

175 *See, e.g.*, Ex. P01342; Ex. P00094, p. 10. *See also* Jean-René Ruez, T. 913–914 (29 March 2010).

176 *See, e.g.*, Ex. P00094, pp. 31–32. *See also* Jean-René Ruez, T. 923–924 (29 March 2010).

177 *See, e.g.*, Ex. P00216.

178 Dean Manning, T. 10164 (22 February 2011); Richard Butler, T. 16283 (7 July 2011); Ex. P00214, p. 1. *See also* Dean Manning, T. 10176 (22 February 2011); Jean-René Ruez, T. 913–914 (29 March 2010); Stefanie Frease, Ex. P00783, PT. 7840 (27 February 2007).

179 Ex. P00214, p. 1. Rule 70(C) provides that "the Trial Chamber [...] may not order either party to produce

69. In his Final Brief, the Accused challenges the reliability of these images, on the grounds that no evidence was presented on their origin, the method of their creation, the manner of their editing, how to interpret them or whether they were delivered to the Prosecution in their original form or previously modified.[180] The Chamber acknowledges that evidence is lacking on the method of creation of these images.[181]

70. However, this does not impair the credibility of aerial images in general. Dean Manning and Jean-René Ruez—both former OTP investigators[182]—have extensively testified about their use. Aerial images have often complemented forensic archaeological or anthropological reports.[183] The fact that Manning, Ruez, and Richard Wright, an archaeologist,[184] first identified and then indeed located gravesites by aerial images points to their authenticity and utility as evidence.[185] In addition, the interpretation or authenticity of an aerial image has often been corroborated by witnesses' testimony.[186] The Chamber thus finds aerial images generally to be reliable and of probative value.

(e) Zvornik Brigade Duty Officer Notebook

71. The Zvornik Brigade Duty Officer's Notebook ("Notebook")[187] was used by Zvornik Brigade Duty Officers from 29 May until 27 July 1995 to enter contemporaneous notes during their shifts.[188] The Duty Officer was posted at the Brigade Headquarters ("Standard Barracks") for a shift of 24 hours to keep track of important events and combat activities and to transmit orders and create reports.[189] The Notebook came into the possession of the OTP in 2003.[190]

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additional evidence received from the person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance."

180 Accused Final Brief, paras. 158, 160.

181 Stefanie Frease testified that Ruez explained to her how to interpret the aerial images. Stefanie Frease, T. 5292 (13 September 2010).

182 Dean Manning, Ex. P01819, PT. 18903–18904 (10 December 2007); Jean-René Ruez, T. 908 (29 March 2010).

183 Jean-René Ruez, T. 1043 (30 March 2010).

184 Richard Wright, T. 5648 (21 September 2010); Ex. P00890, p.1.

185 Dean Manning, T. 10164 (22 February 2011); Dean Manning, Ex. P01819, PT. 18907 (10 December 2007); Jean-René Ruez, T. 1043 (30 March 2010); Richard Wright, Ex. P00874, KT. 3695 (29 May 2000).

186 *See*, *e.g.*, Dean Manning, T. 10167 (22 Feburary 2011) (referring to the testimony of Dražen Erdemović who provided the dates of the killings); Tomasz Blaszczyk, T. 7569–7572 (10 November 2010) (verifying the accuracy of the markings on aerial image Ex. P01342). *See also* Stefanie Frease, T. 5225 (10 September 2010).

187 Ex. P00014. There is also a bilingual version of the Notebook, known as the "teacher's edition" of the Notebook, only covering the days from 11 July until 24 July 1995 and containing markings by the Prosecution. Ex. P01459; Erin Gallagher, T. 8924–8925 (14 December 2010).

188 PW-057, Ex. P02279 (confidential), PT. 15962 (closed session) (28 September 2007); Ljubo Bojanović, Ex. P00008 (confidential), BT. 11703 (8 July 2004); Milanko Jovičić, Ex. P01701, PT. 11533–11535 (15 May 2007); Erin Gallagher, T. 8922–8923 (14 December 2010).

189 Erin Gallagher, T. 8922–8923 (14 December 2010); Ljubo Bojanović, Ex. P00008 (confidential), BT. 11690, 11694–11695 (8 July 2004); PW-057, Ex. P02279 (confidential), PT. 15962 (closed session) (28 September 2007).

190 Erin Gallagher, T. 8924 (14 December 2010).

72. The Accused considers both the chain of custody and subsequent additions that were made to the Notebook to be problematic.[191]

73. Duty Officers themselves have identified what they and others have written in the Notebook.[192] A handwriting expert has identified in the Notebook the writing of Zvornik Brigade Duty Officers, such as Dragan Jokić[193] and Drago Nikolić.[194] Intercepts and Zvornik Brigade Combat Reports have corroborated other evidence for the identity of Duty Officers.[195] The evidence assembled which includes handwriting expertise and statements and testimony of VRS personnel has in fact been such as to enable a chart to be prepared identifying the handwriting of the Duty Officers for the period 11–23 July.[196]

74. The range of evidence just summarised establishes that the Notebook that has been admitted was indeed used by the Zvornik Brigade Duty Officers in 1995 and that individual members of the Zvornik Brigade wrote large tracts of it. As noted above, the Accused submits that the Notebook was tampered with in such a way that reduces its reliability.[197] Although the OTP was not able to identify who wrote every entry,[198] the Notebook does not contain any physical evidence of being interfered with.[199] The few comments made in pencil after the events referred to in it are easily identifiable and have been fully explained.[200]

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191 Accused Final Brief, para. 219.

192 Erin Gallagher, T. 8931, 8953 (14 December 2010). Milanko Jovičić identified entries he made as Duty Officer in the Notebook. Milanko Jovičić, Ex. P01701, PT. 11487–11488 (14 May 2007), PT. 11533–11535 (15 May 2007). *See also* Ljubo Bojanović, Ex. P00008 (confidential), BT. 11670–11671 (8 July 2004). Gallagher also testified that Sreten Milošević indicated in an interview in 2006 and in his testimony in the *Popović* trial that he became the Duty Officer on 13 July and that he identified his handwriting in an entry for that day. Erin Gallagher, T. 8941–8942 (14 December 2010); Ex. P01459, pp. 28–29, 36–37.

193 Kathryn Barr, T. 10902–10903 (7 March 2011); Ex. P01967, pp. 3, 5; Kathryn Barr, Ex. P01183, PT. 13181–13182 (25 June 2007).

194 Kathryn Barr, Ex. P01183, PT. 13183–13185 (25 June 2007); Ex. P01186, pp. 7–8.

195 Erin Gallagher testified that Dragan Jokić also confirmed in an early interview that he was the Duty Officer on 14 July and that the handwriting expert, Kathryn Barr, conclusively confirmed that the entries for that day were in Dragan Jokić's handwriting. Erin Gallagher, T. 8942–8943 (14 December 2010); Ex. P01459, pp. 40–43. This is corroborated by intercepts. Ex. P00373b (confidential) (intercept of conversation between Živanović and Jokić at 8:38 p.m. on 14 July); Ex. P00016c (confidential) (intercept of conversation of Jokić and an unnamed person at 9:02 on 14 July). *See also* Ex. P00014, p. 126. In addition Jokić's initials are present at the end of two Zvornik Brigade Combat Reports which were dated 14 July. Ex. P00010; Ex. P00011. *See also* Ex. P01121 (a Zvornik Brigade Combat Report for 13 July containing Sreten Milošević's initials).

196 Erin Gallagher, T. 8941–8942 (14 December 2010); Ex. P01459, pp. 148–156 (a chart identifying the Duty Officers from 12 July to 23 July and the basis for this identification in the form of the statements and testimony of VRS personnel, handwriting analysis and other evidence).

197 *See supra* n. 191.

198 Erin Gallagher, T. 8935 (14 December 2010).

199 Erin Gallagher, T. 8954 (14 December 2010) (testifying that there are no pages torn out, or items crossed out or whited out and the entries are spaced as though they were written contemporaneously throughout the notebook). Gallagher also testified that the Notebook had been used not only by the witnesses themselves who wrote in it but also by many others from the Zvornik Brigade who have relied on it for its accuracy, and at no time has it been determined that it has been tampered with. *Ibid.*

200 Erin Gallagher, T. 8928 (14 December 2010); PW-057, Ex. P02279 (confidential), PT. 15962–15963 (closed session) (28 September 2007).

75. The Chamber concludes that the only reasonable inference from the totality of evidence is that the Notebook is authentic and that it has not been tampered with. Although the chain of custody is unclear for the time prior to 2003, there is no reason to believe that non-authentic notes have been added. In reaching this conclusion the Chamber attaches particular weight to the strong evidence of individual Duty Officers having made entries and the absence of any significant indication of interference with the Notebook.

3. Adjudicated Facts

76. The Chamber has taken judicial notice pursuant to Rule 94(B) of 523 Adjudicated Facts.[201] As stated in its decision, the legal effect of judicially noticing an adjudicated fact is that "a Chamber establishes a well-founded presumption for the accuracy of this fact, which therefore does not have to be proven again at trial, but which subject to that presumption may be challenged at that trial."[202] Furthermore, the effect of judicial notice pursuant to Rule 94(B) is "only to relieve the Prosecution of its initial burden to produce evidence on the point; the defence may then put the point into question by introducing reliable and credible evidence to the contrary."[203] While the burden of producing evidence is shifted to the accused when the Chamber judicially notices an adjudicated fact proposed by the Prosecution, the ultimate burden of persuasion—that is, proof beyond a reasonable doubt—always remains on the Prosecution.[204]

77. On these bases, the Chamber has assessed the weight of the Adjudicated Facts, taking into consideration the totality of evidence.[205] Where the Chamber has accepted evidence that contradicts an Adjudicated Fact, the presumption of the accuracy of the Adjudicated Fact will have been rebutted. The Chamber has made numerous factual findings in which Adjudicated Facts have been supported or amplified by other evidence that has been admitted. In this respect, the Chamber notes the submission of the Accused that "[w]henever evidence is presented before the Trial Chamber, or when even more evidence is presented than in the proceedings which resulted in the judgement on the basis of which judicial notice of these facts was taken [...], the Chamber should refrain from

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201 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts pursuant to Rule 94 (B), 17 December 2009 ("Adjudicated Facts Decision").

202 Adjudicated Facts Decision, para. 9 (citing *Prosecutor v. Milošević*, Case No. IT-02-54-AR73.5, Decision on the Prosecution's Interlocutory Appeal Against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 October 2003, p. 4).

203 Adjudicated Facts Decision, para. 9 (citing *Karemera et al.* Interlocutory Appeal Decision on Judicial Notice), para. 42; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 14 March 2006 ("*Prlić et al.* Pre-Trial Decision"), para. 10; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92*bis*, 28 February 2003, paras. 16–17).

204 *See* Adjudicated Facts Decision, para. 10.

205 *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, 24 March 2005, para. 17; *Prlić et al.* Pre-Trial Decision, para. 11. *See also* Adjudicated Facts Decision, para. 10.

relying on the 'adjudicated facts'."[206] The Chamber is of the view that this stance conflicts with the principle stated above that the weight of the Adjudicated Facts should be assessed in light of the totality of evidence in the case.

[206] Accused Final Brief, para. 211.

III. RS MILITARY AND POLICE STRUCTURES[207]

A. Bosnian Serb Forces

78. The "Bosnian Serb Forces" referred to throughout this Judgement were composed of the VRS, the police of the MUP,[208] and the civilian protection,[209] and were commanded by the RS President, Radovan Karadžić in 1995.[210] Karadžić, as the President, was the head of the Supreme Command, formed in November 1992; this command further consisted of the Vice Presidents,[211] the President of the National Assembly of the Serbian People,[212] the Prime Minister,[213] the Minister of Interior,[214] and the Minister of Defence.[215] As the Supreme Commander of the armed forces, Karadžić had the sole authority to issue orders to the VRS Main Staff and to its subordinate units through Ratko Mladić.[216]

B. VRS and VRS Main Staff

1. Composition of the VRS and Applicable Law

79. Formed by mainly professional and trained remnants of the former Yugoslav National Army ("JNA"),[217] the VRS had six Corps—the 1st and 2nd Krajina Corps, the Eastern Bosnia Corps, the Herzegovina Corps, the Sarajevo-Romanija Corps, and the Drina Corps.[218] The Corps were the

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207 This section is intended to provide the Chamber's analysis of the military and police structures of the key units to the extent that they are directly relevant to the events alleged in the Indictment and to the determination of the charges against the Accused. Some other organs not dealt with in this section are addressed elsewhere in this Judgement.

208 *See infra* paras. 149–158.

209 With regard to the civilian protection, see *infra* n. 1065.

210 Manojlo Milovanović, T. 14192–14193, 14196–14197 (17 May 2011); Ljubomir Obradović, T. 11970 (29 March 2011); Ex. P02746 (Law on the Army, issued on 1 June 1992), p. 24, Art. 174. *See also* Adjudicated Fact 140.

211 Nikola Koljević was Vice President in 1995. *See* Ex. P00689, p. 3. According to Manojlo Milovanović, Biljana Plavšić was also Vice President 1995. Manojlo Milovanović, T. 14195–14196 (17 May 2011).

212 Momčilo Krajišnik was the President of the National Assembly. Manojlo Milovanović, T. 14195 (17 May 2011).

213 In 1995, there were three Prime Ministers: Dušan Kozić, replaced first by Rajko Kasagić later that year, followed by Gojko Kličković. Manojlo Milovanović, T. 14195 (17 May 2011).

214 Tomac Kovač was the Minister of the Interior. Manojlo Milovanović, T. 14195 (17 May 2011).

215 Manojlo Milovanović, T. 14195 (17 May 2011). *See also* Ex. P02475, p. 12 (VRS Main Staff Command Responsibility Report by Richard Butler, noting that this body consisted of the President, Vice President, Speaker of the Assembly, the Minister of Defence, and the Minister of the Interior). Milan Ninković was the Minister of Defence. Manojlo Milovanović, T. 14195–14196 (17 May 2011).

216 Manojlo Milovanović, T. 14193, 14196 (17 May 2011).

217 Ex. P02470, p. 6; Ex. D00261, p. 4; Rupert Smith, Ex. P02086, PT. 17808 (9 November 2007); Rupert Smith, T. 11579 (21 March 2011); Thomas Dibb, T. 4867–4868 (2 September 2010).

218 Ex. P02470, p. 6; Ex. P00104, p. 5. *See also* Adjudicated Fact 139; Ex. D00261, p. 10. Dragomir Milošević was the Sarajevo-Romanija Corps Commander. Louis Fortin, Ex. P00587, PT. 18246 (26 November 2007). Novica Simić was the Eastern Bosnia Corps Commander. Novica Simić, Ex. P02756, PT. 28483 (19 November 2008); Milenko Todorović, T. 12929 (18 April 2011), T 13061 (19 April 2011); Ex. P02748. In the Eastern Bosnia Corps, Colonel Milenko Todorović was the Chief of Intelligence and Security Department. Milenko Todorović, T. 12924, 12929 (18 April 2011) (also stating that when he joined the Eastern Bosnia Corps in November 1993 he took over this position from Colonel Petar Jakovljević); Novica Simić, Ex. P02756, PT. 28647–28648 (21 November 2008).

highest-level combat components of the VRS and operated under the control of the VRS Main Staff.[219]

80. The VRS adopted and applied, with modification, the rules, regulations, and doctrines of the JNA, such as the criminal law code incorporating the laws of armed conflict set out in the Geneva Conventions,[220] as well as the rules concerning service in the security and the intelligence organs, the Military Police ("MP"), and command and control.[221] VRS members received training on the international laws of war and the Geneva Conventions.[222]

2. Establishment and Competence

81. On 11 May 1992, at a barracks in Crna Rijeka, Mladić announced to officers present, including the Accused, that on the next day at the 16th Session of the National Assembly of the Serbian People in BiH, the Army of the Serbian Republic of BiH (later to become the VRS) would be established.[223] He then informally appointed the officers, including the Accused, to form the VRS Main Staff.[224] The barracks in Crna Rijeka, which was about nine kilometres north-east from Han Pijesak, became the VRS Main Staff Headquarters.[225]

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219 Richard Butler, T. 16456 (11 July 2011).

220 Ex. P02479 (RS Official Gazette Publication of the Law on Amendments to the Criminal Code of the SFRY); Ex. P02480 (RS Criminal Law, Chapter XVI, Criminal Offences against Humanity and International Law); Ex. P02481 (Karadžić Order on the Application of the Rules of the International Law of War in the Army of the Serbian Republic of BiH); Ex. P02482 (Regulations on the Application of International Laws of War in the Armed Forces of the SFRY); Richard Butler, T. 16287–16288 (7 July 2011), T. 16307–16308, 16316–16319 (8 July 2011); Ljubomir Obradović, T. 12183–12184 (31 March 2011); Mikajlo Mitrović, T. 14925 (1 June 2011), T. 15054 (2 June 2011); Dragomir Keserović, T. 13871 (10 May 2011); Petar Salapura, T. 13626 (3 May 2011), T. 13845 (9 May 2011). In particular, the Regulations of the Application of International Laws of War in the Armed Forces of the SFRY provides, *inter alia*, humane treatments of prisoners of war and civilians in the hands of a party to a conflict. Ex. P02482, pp. 62–63, 74–76, Arts. 207–210, 253–261. *See also infra* paras. 1050, 1118.

221 Ex. D00202 (SFRY Regulations on the Responsibilities of the Land Army Corps Command in Peacetime, 1990); Ex. D00203 (Rule of Service of Security Organs in SFRY Armed Forces, 1984); Ex. P01297 (Service Regulations of the SFRY Armed Forces Military Police, 1985); Ex. D00248 (Manual of Intelligence Support of the SFRJ Armed Forces, 1987); Momir Nikolić, T. 12255–12258 (4 April 2011), T. 12482–12483 (7 April 2011); Dragomir Keserović, T. 14043–14044, 14062 (12 May 2011), T. 14119 (16 May 2011); Mikajlo Mitrović, Ex. P02259, PT. 25048–25049 (2 September 2008); Petar Škrbić, T. 18794 (2 February 2012).

222 Mikajlo Mitrović, T. 14925 (1 June 2011); Richard Butler, T. 16307–16308 (8 July 2011).

223 Manojlo Milovanović, T. 14184 (17 May 2011). *See infra* para. 162. At this assembly, it was decided that the VRS's uniforms and insignia designating the rank would be the same as those of the JNA and the Territorial Defence; the insignia on the caps would have the Serbian flag as its background, and on the left upper arm there would be a round field with a Serbian flag and the inscription "Serbian Republic of BH Army". Ex. P02477, pp. 57–58.

224 Manojlo Milovanović, T. 14183–14184 (17 May 2011) (the officers included Lieutenant General Mladić, the Commander; Major General Manojlo Milovanović, the Chief of Staff; then-Colonel Tolimir ("Accused"), the Chief of the Sector for Intelligence and Security Affairs; Major General Milan Gvero, the Assistant Commander for Morale Guidance, Religious, and Legal Affairs; Major General Đorđe Đukić, the Assistant Commander for Logistics; and Colonel Petar Salapura, the Chief of the Intelligence Administration in Sector for Intelligence and Security Affairs; Captain First Class Dragomir Pećanac was also present at this meeting), T. 14252–14253 (18 May 2011); Dragomir Pećanac, T. 18037 (12 January 2012); Ex. D00260; Ex. D00261, p. 4. Pećanac testified that at the time of the VRS's establishment, the Sector for Intelligence and Security Affairs was staffed with three individuals—the Accused, Salapura and himself. Dragomir Pećanac, T. 18040, 18054 (12 January 2012).

225 Manojlo Milovanović, T. 14180–14183, 14223–14224 (17 May 2011), T. 14264–14266 (18 May 2011). *See also*

82. Commanded by then-Colonel General Mladić,[226] the VRS Main Staff was the highest command of the VRS.[227] It was in charge of mobilising the army; establishing units at all levels, training officers and soldiers; overseeing logistics for the army; planning and carrying out combat operations; reporting to the Supreme Command; receiving and processing reports received from subordinated units; and approving or disapproving requests from subordinate commands.[228] It also ensured that the VRS military activities could be fully harmonised with the ongoing political and diplomatic efforts undertaken by other branches of the RS government.[229]

3. Organisation

83. In 1995, the Main Staff consisted of five sectors and two administrations: the Staff Sector headed by Lieutenant Colonel General Manojlo Milovanović, the Deputy Commander and Chief of the Main Staff;[230] the Sector for Morale Guidance, Religious and Legal Affairs, headed by Lieutenant Colonel General Milan Gvero; the Sector for Logistics (Rear Services), headed by Lieutenant Colonel General Đorđe Đukić; the Sector for Organisation, Mobilisation, and Personnel Affairs, headed by Major General Petar Škrbić; the Sector for Intelligence and Security Affairs, headed by Major General Zdravko Tolimir (the Accused);[231] the Administration for Planning, Development, and Finance, headed by Major General Stevan Tomić; and the Administration for Air Force and Air Defence, headed by Major General Jovo Marić.[232] As assistant commanders,[233] the

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Ex. D00260, pp. 1, 12–13; Ex. P02229. 155 was the number for the operations centre of the VRS Main Staff Headquarters, for which the telephonic code-name was "Panorama". Manojlo Milovanović, T. 14268–14269 (18 May 2011) (stating that the number had Milovanović's name because of his position as the Chief of Staff); Ex. P00763; Ljubomir Obradović, T. 11991 (29 March 2011); Milanko Jovičić, Ex. P01701, PT. 11489 (14 May 2007); Richard Butler, T. 16744, 16748, 16750 (18 July 2011). "Panorama 01" was the code name for Mladić. Richard Butler, T. 16748–16749 (18 July 2011). The rear command post of the VRS Main Staff was in Han Pijesak, which was about four kilometres from the VRS Main Staff Headquarters in Crna Rijeka. Petar Škrbić, T. 18524–18525 (30 January 2012), T. 18605 (31 January 2012).

226 Ljubomir Obradović, T. 11935 (29 March 2011), T. 12140–12141 (31 March 2011); Novica Simić, Ex. P02756, PT. 28484–28486 (19 November 2008). *See also* Adjudicated Fact 140.

227 Ex. D00260, pp. 1, 11; Manojlo Milovanović, T. 14198–14199 (17 May 2011); Milenko Lazić, Ex. P02733, PT. 21746 (4 June 2008).

228 Manojlo Milovanović, T. 14198–14199 (17 May 2011).

229 Ex. P02475, p. 13. *See also* Rupert Smith, Ex. P02086, PT. 17572, 17591–17592 (6 November 2007). According to the "Analysis of the Combat Readiness and Activities of the Army of Republika Srpska in 1992", the VRS Main Staff eventually grew into "the supreme command of the Army of Republika Srpska at the strategic level and made itself capable of controlling and commanding the armed struggle and the war as a whole", "discharging the tasks of the Supreme Command Staff while at the same time controlling and commanding the Army and the units of Republika Srpska". Ex. P02880, pp. 12, 158.

230 Manojlo Milovanović, T. 14176 (17 May 2011). *See also* Ljubomir Obradović, T. 11935–11936 (29 March 2011), T. 12019 (30 March 2011); Milomir Savčić, Ex. P02418, PT. 15324 (13 September 2007); Novica Simić, Ex. P02756, PT. 28484–28486 (19 November 2008), PT. 28561 (20 November 2008).

231 Ljubomir Obradović, T. 11949 (29 March 2011); Petar Salapura, T. 13474–13475 (2 May 2011); Dragomir Keserović, T. 13904 (10 May 2011); Manojlo Milovanović, T. 14213–14214 (17 May 2011); Zoran Malinić, T. 15302 (8 June 2011); Dragomir Pećanac, T. 18040, 18048–18049 (private session) (12 January 2012).

232 Manojlo Milovanović, T. 14213–14214 (17 May 2011); Ex. P02226 (VRS Main Staff Structure Chart reflecting Milovanović's understanding of its structure in July 1995); Ljubomir Obradović, T. 11948 (29 March 2011), T. 12019–12020 (30 March 2011); Petar Škrbić, T. 18522–18523 (30 January 2012); Ex. P02473, pp. 31–32; Mirko Trivić, Ex. P01197, PT. 11935 (22 May 2007). *See also* Manojlo Milovanović, T. 14254–14256

heads of these sectors and administrations exercised command and control over their own sectors, within which the officers were their professional subordinates.[234] They, however, could not issue orders to one another or to assistant commanders at the Corps level without Mladić's approval.[235]

84. In the Staff Sector, which was responsible for organising and coordinating the work of the Main Staff,[236] Major General Radivoje "Mićo" Miletić[237] was the Chief of the Administration for Operations and Training.[238] Miletić's duties were to compile and analyse reports received from subordinate commands, report any problems identified in those reports to those present at the evening meetings held at the Main Staff Headquarters, and give his proposals on how to resolve these problems.[239] He also drafted reports to the Supreme Command, all combat orders, and notifications relating to Mladić's decisions of the previous mornings.[240] If Milovanović was absent, Miletić would "stand in" for him, carrying out the daily duties of Chief of Staff.[241] As Chief of Operations, Miletić was the "soul" of the VRS Main Staff Command.[242]

85. As Chief of the Sector for Morale Guidance, Religious, and Legal Affairs, Gvero was tasked with raising and maintaining the morale of the VRS and providing conditions for troops to attend religious ceremonies;[243] additionally, up until sometime in 1994, he was responsible for the establishment and lawfulness of military courts.[244]

(18 May 2011); Ex. D00341, pp. 2–3. Milovanović was not physically present at the VRS Main Staff Headquarters between 29 May and 15 October 1995 due to his assignment to the west of the RS territory, where the VRS was engaged in defensive combat actions against Muslim and Croat forces. Manojlo Milovanović, T. 14223, 14225–14227 (17 May 2011).

233 Ex. P02471, p. 107.

234 Petar Škrbić, T. 18546 (30 January 2012).

235 Petar Škrbić, T. 18541–18542, 18545 (30 January 2012).

236 Ljubomir Obradović, T. 11936, 11939, 11940 (29 March 2011). *See also* Rupert Smith, Ex. P02086, PT. 17611 (7 November 2007).

237 Ljubomir Obradović, T. 11991 (29 March 2011); Ex. P02226.

238 Ljubomir Obradović, T. 11941, 11951 (29 March 2011); Manojlo Milovanović, T. 14219–14220 (17 May 2011); Milenko Lazić, Ex. P02733, PT. 21752 (4 June 2008). Colonel Ljubomir Obradović was Miletić"s Deputy and the Chief of the Section for Operations Affairs, and Colonel Krsto Đerić was the Chief of Section for Training. Ex. P02226; Ljubomir Obradović, T. 11929, 11931, 11939, 11943–11944, 11951 (29 March 2011); Ex. D00341, p. 4.

239 Manojlo Milovanović, T. 14220 (17 May 2011). *See also infra* paras. 92–94.

240 Manojlo Milovanović, T. 14220 (17 May 2011).

241 Manojlo Milovanović, T. 14220 (17 May 2011). Milovanović explained that for a period of absence of a commander for up to 30 days, the commander's deputy acts on his behalf and for this no written order is required; although Milovanović was absent for more than six months, Miletić did not acquire the "standing in" status since Milovanović maintained his position as Chief of Staff and engaged in another staff task at the front lines. Manojlo Milovanović, T. 14233–14236 (17 May 2011). Obradović stated that the designation of "standing in for" began appearing on reports when Milovanović was at the IKM in the west of the RS. Ljubomir Obradović, T. 11978 (29 March 2011). *See, e.g.*, Ex. P01215; Ex. P02143.

242 Manojlo Milovanović, T. 14221 (17 May 2011) (stating that all information from subordinate units was channelled to Miletić, and through him, all the information was dispatched to subordinate and superior commands).

243 Manojlo Milovanović, T. 14237 (17 May 2011).

244 Manojlo Milovanović, T. 14237–14238 (17 May 2011) (stating that sometime in 1994, the military courts were placed under the authority of the Ministry of Defence, but Gvero continued monitoring their work and was

86. The Department for Civil Affairs, which was established in 1994,[245] was responsible for liaising with foreign military representatives and other organisations; it was in charge of dealing with information on the movement of UNPROFOR and humanitarian aid convoys and served generally as UNPROFOR's contact point.[246] Colonel Miloš Đurđić was the Chief of the Department, and his deputy was Lieutenant Colonel Slavko Kralj.[247]

87. The Sector for Intelligence and Security Affairs and the Accused's role as its Chief will be discussed further in separate sections.[248]

4. Military Principles

88. The Bosnian Serb Forces functioned in accordance with a few foundational principles: principles of command and control, unity, and subordination.

89. The principle of command and control signifies that a "control entity had the right to take action and measures when [...] a situation was established".[249] Commanding is a method employed to directly manage certain units or institutions of an army and refers to a right to engage directly and make decisions on the activities of a unit, including personnel issues; and controlling refers to professional or specialist assistance to the commander.[250] A third term, "managing", refers to the process of overseeing the implementation of orders issued by a commander.[251]

90. Related to this principle is the unity of command. Based on this, a commander, such as Mladić in the VRS Main Staff, had the exclusive right to command[252] subordinate units so as to prevent the confusion that would arise from having two equal commanders issue different orders.[253]

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responsible to Mladić for the work of the military judiciary).

245 Manojlo Milovanović, T. 14210–14211 (17 May 2011).

246 Ljubomir Obradović, T. 11963 (29 March 2011); Slavko Kralj, T. 18271 (23 January 2012). With regard to the specific role of this department, see *infra* paras. 36–37.

247 Slavko Kralj, T. 18272 (23 January 2012); Ljubomir Obradović, T. 11963 (29 March 2011); Manojlo Milovanović, T. 14210–14211 (17 May 2011); Ex. P02226; Ex. P02227.

248 *See infra* paras. 103–122.

249 Petar Škrbić, T. 18549 (30 January 2012). The Accused put forth an argument that the terms "rukovođenje", "komandovanje" and "kontrola" are distinct terms in B/C/S language. Accused Final Brief, paras. 30, 33. *See* Petar Škrbić, T. 18535–18536 (30 January 2012). For this, the Chamber references the synonyms provided by the interpreters for all three terms: "komandovanje" was translated as "command", "rukovođenje" was translated in military terms as "control" (but in another context it could mean things like "managing" or "administering"), and "kontrola" was translated as "control". Petar Škrbić, T. 18572–18573 (30 January 2012). "Kontrola" is performed by the commander by way of his immediate insight or through his organs in a certain space, a certain time, in a certain unit. Ljubomir Obradović, T. 12147 (31 March 2011). While units are commanded, institutions are "controlled". Ljubomir Obradović, T. 12144 (31 March 2011).

250 Milenko Todorović, T. 13051 (19 April 2011).

251 Milenko Todorović, T. 13051–13052 (19 April 2011).

252 Obradović testified that the concept of command followed by the JNA and then the VRS entailed five functions: (i) planning (25%); (ii) organisation (50%); (iii) issuing orders (10%); (iv) co-ordination (10%); and (v) "kontrola" (5%). Ljubomir Obradović, T. 12144 (31 March 2011).

253 Ljubomir Obradović, T. 12139–12141, 12196 (31 March 2011); Petar Škrbić, T. 18742 (2 February 2012).

91. Pursuant to the principle of subordination, once a commander issues an order, the subordinate officers who are tasked may not change an order, but they must make sure that the decision is implemented.[254] In other words, lower-ranking officers must comply with what they are commanded to do.[255] The basic principles of unity of command and subordination required that only one commander could exist in a unit, for which he was responsible.[256]

5. Decision-Making Process

92. The heads of the sectors and administrations were directly subordinated to Mladić.[257] They constituted the "inner circle of the command" or the "collegium", taking "the most important decisions".[258] When taking decisions about activities on the operational level involving corps, the collegium would sit in an extended form and include the Corps commanders.[259]

93. The collegium would meet at the operations centre of the VRS Main Staff Headquarters twice a day, every morning at around 6:00 a.m. and in the evening at around 8:00 p.m.; they would review and discuss the situation on the ground on the basis of daily combat reports received from subordinate commanders.[260] The Assistant Commanders would make proposals at these meetings

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254 Manojlo Milovanović, T. 14217 (17 May 2011). *See also* Petar Škrbić, T. 18534, 18555 (30 January 2012) (stating that only Mladić would take decisions in the VRS and that the Assistant Commanders could not change Mladić's orders).

255 Manojlo Milovanović, T. 14217 (17 May 2011).

256 Dragomir Keserović, T. 14071 (12 May 2011). *See also* Dragomir Keserović, T. 14072 (12 May 2011) (discussing para. 25(b) of Ex. P01297).

257 Manojlo Milovanović, T. 14213–14214 (17 May 2011); Ex. P02226; Ljubomir Obradović, T. 11943 (29 March 2011), T. 12019 (30 March 2011). *See also* Ex. D00260, p. 6; Ex. D00261, p. 9. With respect to the purpose of Assistant Commanders in general, see Rupert Smith, Ex. P02086, PT. 17611 (7 November 2007). When Mladić was absent, Milovanović would take over the command. Ljubomir Obradović, T. 11936 (29 March 2011). In their absence, Mladić would appoint one of the Assistant Commanders to deputise for him. Ljubomir Obradović, T. 12017, 12020 (30 March 2011). Those who could stand in for Mladić were in the following order: Gvero, Đukić, Petar Škrbić, the Accused, the Chief of Planning, Development, and Finance Administration, and the Chief of the Air Force and Anti-Aircraft Defence Administration. Ljubomir Obradović, T. 11937 (29 March 2011). *See also* Mikajlo Mitrović, T. 15079–15080 (2 June 2011).

258 Ljubomir Obradović, T. 12016–12017, 12019 (30 March 2011); Petar Škrbić, T. 18699, 18702, 18723–18725 (1 February 2012); Ex. P01029 (Video of New Year's party in 1996), 01:49:30–01:49:40, pp. 6–7 (showing a New Year celebration with senior generals of the VRS in 1992, in which Mladić stated that: "The most important decisions were taken by a group of five people. This was the inner core of the Main Staff, which in addition to myself, including General Milovanović, [...], and Generals Đukić, Gvero and Tolimir. This was the inner core. The other generals also participated in very difficult, and very often in all decision-making."); Ljubomir Obradović, T. 11943 (29 March 2011); Milenko Lazić, Ex. P02733, PT. 21758 (4 June 2008). *See also* Ex. P01029, 01:49:30–01:49:40, 02:27:47–02:28:02, p. 17.

259 Manojlo Milovanović, T. 14200–14201 (17 May 2011) (further stating that Corps level decisions were therefore only reached with the presence of the corps commanders, who were best positioned to know their capacities). *See also* Ex. P01029, 01:19:23–01:22:16, pp. 6–7 (Mladić stating that: "Important decisions that could be made later, those that could wait a while, were made at the Commander's expanded collegiums, which were attended by Corps commanders.")

260 Manojlo Milovanović, T. 14199–14204, 14223–14224 (17 May 2011). *See also* Ljubomir Obradović, T. 11986 (29 March 2011). The morning meetings were attended by Mladić, the Assistant Commanders, and the Chiefs of Administrations, including the Accused and the two Chiefs of the Administrations of the Sector for Intelligence and Security Affairs, Beara, and Salapura; the evening meetings, which were attended by Mladić or Milovanović, and the Assistant Commanders, were held to analyse the daily combat reports received from subordinated units and to discuss logistic needs in order for preparations to be made for the following day. Manojlo Milovanović,

within their respective areas of speciality.[261] On the basis of this reporting, Milovanović would make proposals to Mladić as to the use of the troops under his command.[262] With only those necessary for the relevant decisions—Mladić and the Assistant Commanders[263]—a decision would be made, following which the entire collegium would be informed of it.[264]

94. In accordance with the principle of subordination, Milovanović and the Assistant Commanders would "fervently go about executing that decision".[265] If Mladić made a decision adopting the proposal of one of the Assistant Commanders, for example, the Accused, then the Accused would issue an order to his subordinate units "in the spirit" of Mladić's decision and would be responsible for monitoring the execution of that decision.[266]

6. Reporting System and Combat Readiness Analyses

95. As in any army, reporting was vital in the VRS as timely and accurate reports from the subordinate units enabled the VRS Main Staff and the Supreme Commander to react appropriately to the development of events on the ground.[267] All the tasks assigned to the subordinate units had to be reported upon[268] so as to monitor how the tasks had been implemented.[269] By way of daily combat reports, interim combat reports (when needed),[270] as well as oral reporting, the VRS had an efficient reporting system in place from the ground up through the VRS Main Staff,[271] in accordance with the line of subordination and the principle of the unity of command.[272]

T. 14202–14203 (17 May 2011). In the absence of the Accused, either Beara or Salapura would replace him. Manojlo Milovanović, T. 14202 (17 May 2011).

261 Manojlo Milovanović, T. 14199–14200, 14216–14217 (17 May 2011). *See also* Manojlo Milovanović, T. 14241–14243 (17 May 2011); Ljubomir Obradović, T. 12017 (30 March 2011).

262 Manojlo Milovanović, T. 14200, 14216 (17 May 2011).

263 Manojlo Milovanović, T. 14208 (17 May 2011).

264 Manojlo Milovanović, T. 14200, 14217 (17 May 2011).

265 Manojlo Milovanović, T. 14217 (17 May 2011). *See also* Petar Škrbić, T. 18534, 18555 (30 January 2012) (stating that only Mladić would take decisions in the VRS and that the Assistant Commanders could not change Mladić's orders).

266 Manojlo Milovanović, T. 14218–14219 (17 May 2011) (explaining further that "if the unit or the subordinate commander was doing something else, it was Tolimir's duty to direct him back to work in the spirit of the commander's decision, with addition[al] orders, explanations [...]").

267 Ljubomir Obradović, T. 11969–11970 (29 March 2011); Milenko Lazić, Ex. P02733, PT. 21788 (4 June 2008); Novica Simić, Ex. P02756, PT. 28493 (19 November 2008). *See also* Mirko Trivić, T. 8643–8644 (9 December 2010); Mómir Nikolić, T. 12246–12247 (4 April 2011); Richard Butler, T. 16561 (13 July 2011).

268 Mirko Trivić, T. 8643–8644 (9 December 2010).

269 Ljubomir Obradović, T. 11945 (29 March 2011).

270 When there was a change of circumstance or when the situation otherwise warranted, the VRS would prepare an interim combat report covering a shorter period of time or to discuss a more discrete battle-field activity that was affecting its units. Richard Butler, T. 16561–16562 (13 July 2011); Ex. P02514. *See also* PW-057, Ex. P02279 (confidential), PT. 16165–16166, 16169 (closed session) (10 October 2007); Ljubo Bojanović, Ex. P00008a, BT. 11708 (8 July 2004).

271 Milenko Lazić, Ex. P02733, PT. 21786–21787 (4 June 2008); Novica Simić, Ex. P02756, PT. 28491 (19 November 2008); PW-057, Ex. P02279 (confidential), PT. 16166 (closed session) (10 October 2007). When sending messages, the VRS used two levels of coding—one used by the sender and the other by the receiver—so that an intercepted coded message was not easy to open. Dragomir Keserović, T. 13899–13900 (10 May 2011).

96. A daily combat report was prepared in the following manner: operation duty officers in the Brigades drafted[273] and sent daily operative reports to the Corps at approximately 4:00 or 5:00 p.m., containing information about the situation on the ground; upon receipt of the reports, the Corps commands drafted reports integrating the brigades' reports and sent them to the VRS Main Staff at around 6:00 p.m. on the same day.[274] Miletić, having analysed the reports, would brief those present at the daily evening meetings on the issues identified therein.[275] Milovanović would review the integrated reports, which would then be forwarded to Karadžić.[276] In addition to written reporting, the Corps commands were in daily telephone contact at around 8:00 p.m. with Mladić, who would discuss the reports received at the daily meetings in the VRS Main Staff Headquarters.[277]

97. The VRS also had a periodic reporting system in place—monthly, quarterly, semi-annual, and annual reports.[278] An annual report called "Analysis of Combat Readiness" was prepared for an entire year at all the levels—the VRS Main Staff and its subordinate units, as well as the Supreme Command and political organs.[279] The purpose of this analysis was to plan further combat operations.[280] At the level of the VRS Main Staff, briefings on combat readiness analyses took place periodically during the war.[281]

98. On the basis of periodic reports sent from the subordinate units, the VRS Main Staff and the Supreme Command would define the strategic tasks that were to be implemented in future

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Code books, which contained a letter, symbol, or numerical code for every term were used for all important telephone conversations, as well as radio and radio-relay conversations; such codes were changed daily, weekly, or monthly, and whenever there was a suspicion of a leak or a suspicion that a code had been compromised. Dragomir Keserović, T. 13900–13901 (10 May 2011).

272 Novica Simić, Ex. P02756, PT. 28590–28591 (21 November 2008). *See also* Novica Simić, Ex. P02756, PT. 28496 (19 November 2008); Ex. P02771.

273 All assistants for respective organs would assist the duty operations officers by drafting sections that required their expertise; for instance, the assistant for security would draft about security issues. Mihajlo Galić, T. 16073–16075 (5 July 2011).

274 Ljubomir Obradović, T. 11973 (29 March 2011); Mihajlo Galić, T. 16074 (5 July 2011); Milenko Lazić, Ex. P02733, PT. 21787–21788 (4 June 2008); Novica Simić, Ex. P02756, PT. 28491 (19 November 2008); PW-057, Ex. P02279 (confidential), PT. 16165–16166 (closed session) (10 October 2007), PT. 16653 (closed session) (19 October 2007); Ljubo Bojanović, Ex. P00008a, BT. 11708 (8 July 2004). *See, e.g.* Ex. P01601.

275 Manojlo Milovanović, T. 14202, 14220 (17 May 2011). *See also* Novica Simić, Ex. P02756, PT. 28491 (19 November 2008).

276 Ljubomir Obradović, T. 11974, 11979 (29 March 2011). *See, e.g.*, Ex. P02143.

277 Novica Simić, Ex. P02756, PT. 28492–24894 (19 November 2008), PT. 28627 (21 November 2008).

278 Novica Simić, Ex. P02756, PT. 28491 (19 November 2008). Semi-annual combat readiness analyses were also conducted. Momir Nikolić T. 12298–12301 (5 April 2011), T. 12361–12362 (6 April 2011); Ex. P02167; Mikajlo Mitrović, T. 14981–14982 (1 June 2011).

279 Novica Simić, Ex. P02756, PT. 28491 (19 November 2008); Milomir Savčić, T. 15775 (21 June 2011); Ex. P02428, p. 3. *See, e.g.*, Ex. P02494; Ex. P02880.

280 Mikajlo Mitrović, T. 14983–14984 (1 June 2011).

281 Novica Simić, Ex. P02756, PT. 28498–28499 (19 November 2008); Ex. P02429; Ex. P02428; PW-057, Ex. P02279 (confidential), PT. 16166 (closed session) (10 October 2007). *See also* Mikajlo Mitrović, T. 14982 (1 June 2011).

periods.[282] They would then be implemented by the Corps commands through operative activities and by the Brigade commands at the tactical level.[283]

7. Directives

99. Directives, which could be issued by Karadžić or Mladić,[284] were an "act of command used by the highest echelons of command" that delegated long-term tasks, assignments, and objectives to subordinate units.[285] Directives "help define the operational context of how the political will of the RS leadership is being translated into broader military objectives".[286] They "lay out, in more concrete terms, how the army intends to achieve those objectives".[287] Based on an annual combat readiness analysis, as a rule, the directives contained tasks for a year.[288] However, due to the changing situation on the ground and various new factors that would come up, they could be issued more frequently.[289]

100. The principal method employed for drafting directives was known as the "full" or "complete" method;[290] for instance, in order to prepare Directive 7, Mladić opened the discussion, the Corps commanders gave a briefing, and the Chiefs of the Sectors of the VRS Main Staff gave a briefing as well.[291] During the analysis, conclusions would be made related to the level of accomplishment of the tasks defined for the previous year, before proceeding to define the tasks for the subsequent year.[292] On this basis, Mladić would formulate a basic principle or plan, after which all command organs would perform their assessments and submit proposals to him.[293] Mladić would then adopt the proposals, which would be integrated into a unified and typed document—a directive,[294] which would then be forwarded to Karadžić.[295] Karadžić would then enter comments in

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282 Novica Simić, Ex. P02756, PT. 28499–28501 (19 November 2008).
283 Novica Simić, Ex. P02756, PT. 28500 (19 November 2008).
284 Novica Simić, Ex. P02756, PT. 28659 (21 November 2008); Mikajlo Mitrović, T. 15010 (2 June 2011). *See also* Ljubomir Obradović, T. 11992 (29 March 2011), T. 12040 (30 March 2011).
285 Ljubomir Obradović, T. 11992 (29 March 2011); Mikajlo Mitrović, T. 15010 (2 June 2011); Richard Butler, T. 16455 (11 July 2011).
286 Richard Butler, T. 16455 (11 July 2011).
287 Richard Butler, T. 16455 (11 July 2011).
288 Novica Simić, Ex. P02756, PT. 28659 (20 November 2008).
289 Novica Simić, Ex. P02756, PT. 28659 (20 November 2008). During the armed conflict, nine "Strategic Directives" were issued to realise the objectives of the RS leadership. *See also infra* para. 164. *See also* Richard Butler, T. 16455 (11 July 2011), T. 16922–16925 (20 July 2011) (stating that a directive would apply for a number of months or a year, depending on the situation, before being superseded by the next directive). *See also infra* paras. 164, 186–188, 191–192. Tasks from prior directives would need to be reformulated and included in superseding directives in order to remain valid. Ljubomir Obradović, T. 12179 (31 March 2011).
290 Ex. P02880, p. 8; Ljubomir Obradović, T. 11992 (29 March 2011) (stating that other methods included the abridged method, or work without consulting the organs and commands.).
291 Ljubomir Obradović, T. 11993 (29 March 2011). *See infra* n. 677.
292 Ljubomir Obradović, T. 11993 (29 March 2011).
293 Ljubomir Obradović, T. 11993–11994 (29 March 2011); Petar Salapura, T. 13497 (2 May 2011); Milomir Savčić, T. 15936 (23 June 2011); Richard Butler, T. 17278–17289 (25 August 2011); Novica Simić, Ex. P02756, PT. 28511–28512 (19 November 2008); Milenko Lazić, Ex. P02733, PT. 21758–21763 (4 June 2008).
294 Ljubomir Obradović, T. 11992–11993 (29 March 2011).

the margin and return the document for retyping into a version that included his statements.[296] Once finalised, the VRS Main Staff would send the directive to the Corps,[297] copying the Assistant Commanders and the Chiefs of Sectors, so that they should be aware of its contents.[298]

8. Deployment and Inspections

101. The VRS Main Staff had a centralised command and control system, with the capacity to retain its control by sending out officers from its headquarters to its subordinate units where an event in question was taking place.[299] This allowed the top and the bottom of this apparatus to understand and communicate well.[300] More specifically, Mladić would dispatch his Deputy or Assistant Commanders in order to take control of crucial events on the ground.[301] By virtue of their rank of general, the senior officers of the VRS Main Staff dispatched in this manner were capable of exercising general command; this made it possible to dispatch the Accused, a specialist in Intelligence and Security, to a command or monitoring position on the ground.[302] Once the Assistant Commander was posted at a "forward headquarters"—known as a forward command post ("IKM")[303]—he commanded in the name of Mladić across the whole range of his responsibilities.[304]

102. Furthermore, the VRS carried out inspections on the ground by using the "method of team tours".[305] Mladić would send the VRS Main Staff senior officers to critical areas of the front in order to monitor the work of the Corps, to synchronise the activities of multiple Corps involved in carrying out the same task, and to ensure that military operations were undertaken as efficiently and effectively as possible.[306]

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295 Ljubomir Obradović, T. 12040 (30 March 2011).
296 Ljubomir Obradović, T. 12040 (30 March 2011).
297 *See, e.g.*, Ex. P01214 (Directive 7 sent from the VRS Main Staff to the Krajina Corps Command, dated 17 March 1995 and signed by Manjolo Milovanović).
298 Ljubomir Obradović, T. 12047–12048 (30 March 2011).
299 Rupert Smith, Ex. P02086, PT. 17577–17578 (6 November 2007).
300 Rupert Smith, Ex. P02086, PT. 17578 (6 November 2007).
301 Manojlo Milovanović, T. 14230 (17 May 2011); Rupert Smith, Ex. P02086, PT. 17577–17578 (6 November 2007); Rupert Smith, T. 11583–11584 (21 March 2011). *See also* Rupert Smith, Ex. P02086, PT 17810–17812 (9 November 2007); Ex. P02105, p. 44; Ex. P02880, p. 160; Novica Simić, Ex. P02756, PT. 28527–28530 (19 November 2008); Ex. P02766; Ex. P02732.
302 Manojlo Milovanović, T. 14230–14231 (17 May 2011).
303 Ljubomir Obradović, T. 11949–11950 (29 March 2011).
304 Rupert Smith, Ex. P02086, PT. 17583 (6 November 2007).
305 Ex. P02880, p. 9.
306 Richard Butler, T. 16438–16440 (11 July 2011), T. 16774 (18 July 2011); Ljubomir Obradović, T. 11950 (29 March 2011); Manojlo Milovanović, T. 14225–14226, 14230 (17 May 2011). *See, e.g.*, Rupert Smith, Ex. P02086, PT. 17579–17580, 17582–11583 (6 November 2007); Richard Butler, T. 16782 (18 July 2011), T. 17367–17368, 17375–17356 (29 August 2011); Ex. P00126.

9. Sector for Intelligence and Security Affairs

103. The Sector for Intelligence and Security Affairs was "the highest administrative and professional organ for activities relating to the organisation of security and intelligence organs, the military police, and reconnaissance, sabotage and electronic reconnaissance units; planning and organisation of security measures and intelligence support; preparation and conduct of special operations at the strategic and operational level; training for special operations; security training and training for intelligence operations."[307] The Sector was comprised of two sections: the Security Administration and the Intelligence Administration, headed by Colonel Ljubiša Beara and Colonel Petar "Pepo" Salapura,[308] respectively.[309] It was tasked with carrying out intelligence and counter-intelligence activities.[310] As much as 80% of the work of the Security and Intelligence Administrations, which also applied to their subordinate organs, included counter-intelligence and intelligence, respectively; the remaining 20% of their tasks consisted of administrative and staff, MP, and "criminal-legal" tasks.[311]

104. As the Chief of this Sector, the Accused directed, coordinated, and supervised the work of the two Administrations, as well as subordinate security and intelligence organs, including the MP.[312] The Administrations and the subordinate security and intelligence organs were duty-bound to exchange relevant information with each other.[313] To avoid duplication and the crossing of

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307 Ex. P02876, p. 28.

308 Petar Salapura, T. 13610–13616, 13621 (3 May 2011) (confirming that "Pepo" is the nickname for himself. However further stating that the reference to "Pepo" would not necessarily mean something referred to himself personally, but rather something directed to the entire Intelligence Administration).

309 Ljubomir Obradović, T. 11949 (29 March 2011); Manojlo Milovanović, T. 14243–14244 (17 May 2011); Mikajlo Mitrović, T. 14941, 14945 (1 June 2011); Ex. P02265; Dragomir Pećanac, T. 18040–18041 (private session) (12 January 2012). In 1993, the security organs were separated from the intelligence organs for the remainder of the war. Mikajlo Mitrović, Ex. P02259, PT. 25104 (2 September 2008). *See also* Ex. P02609 (Mladić's order on Changes in the Organisation of VRS intelligence and security system, dated 13 January 1995, in which Mladić ordered some of the corps to immediately separate their intelligence and security sections). However, the Sarajevo-Romanija Corps had the security and intelligence departments joined likely due to the shortage of staff. Mikajlo Mitrović, T. 14941, 14945 (1 June 2011); Ex. P02265.

310 Manojlo Milovanović, T. 14243 (17 May 2011); Milomir Savčić, Ex. P02418, PT. 15240–15241, 15270–15271 (12 September 2007); Milomir Savčić, T. 15761 (21 June 2011); Ex. P02475, p. 16; Ex. P02876 (Rule Book on the Competencies of Organisational Units of the General Staff of the JNA in Peacetime, 1992), p. 28, Art. 30. *See also* Ex. D00148 (JNA Brigade Rules), p. 38, paras. 118, 122.

311 Ljubomir Obradović, T. 12190–12191 (31 March 2011); Petar Salapura, T. 13641–13642 (4 May 2011); PW-057, Ex. P02279 (confidential), PT. 16216 (closed session) (11 October 2007), PT. 16689–16690 (closed session) (22 October 2007); Ex. P01112, p. 1 (Instructions on Command and Control over the Security and Intelligence Organs of the VRS, signed for Mladić by the Accused and dated 24 October 1994). *See also* Ex. P02475, p. 17. As a result of the problems in the command and control of the security organs referred to in the preamble, Mladić issued orders to subordinate units so as to regulate the command and control of the security organs and enhance the security organs' work. Mikajlo Mitrović, Ex. P02259, PT. 25070–25071 (2 September 2008); Mikajlo Mitrović, T. 15058–15060, 15076 (2 June 2011); Dragomir Keserović, T. 13869–13870 (10 May 2011). *See also* Novica Simić, Ex. P02756, PT. 28636–28637 (21 November 2008).

312 Ljubomir Obradović, T. 11949 (29 March 2011), T. 12149, 12156–12157 (31 March 2011); Petar Salapura, T. 13474, 13478–13479, 13484 (2 May 2011); Mikajlo Mitrović, T. 14977 (1 June 2011); Ex. D00276, pp. 83–84; Ex. D00202, pp. 30–31, Art. 29; Ex. D00203, p. 10, para, 18; Ex. P02210.

313 Petar Salapura, T. 13481 (2 May 2011); Mikajlo Mitrović, T. 14932–14933 (1 June 2011). *See also* Mikajlo

competencies, the Accused was the one to "decide who will get what information, what will be referred to whom".[314] Furthermore, the principle of command and control excluded the possibility of an officer (*e.g.*, Milovanović) issuing direct orders to subordinates two levels down (Beara or Salapura); the officer would contact these subordinates' direct superior (the Accused).[315] The Accused would then decide whether he would assign a special task to the respective Heads of the Security or Intelligence Administration.[316] If a subordinate officer received an order from a superior officer two or more levels above him, the subordinate was obligated to report that order to his direct supervisor.[317]

(a) Security Administration

105. The Security Administration was divided into three main departments: the Counter-Intelligence Department—with an independent body referred to as the "Counter-Intelligence Group" or "KOG",[318] the Analysis Department, and the MP Department.[319] The Security Administration was headed by Beara,[320] who was an immediate subordinate of the Accused.[321] The officers in this Administration included, among others, Lieutenant-Colonel Dragomir Keserović, the Chief of the Military Police Section,[322] and Lieutenant-Colonel Milorad Marić, the Chief of Counter-Intelligence.[323]

Mitrović, T. 14947 (1 June 2011); Ex. P02265; Ex. P02609, p. 3.

314 Petar Salapura, T. 13478–13479 (2 May 2011).

315 Manojlo Milovanović, T. 14191 (17 May 2011).

316 Manojlo Milovanović, T. 14191 (17 May 2011).

317 Manojlo Milovanović, T. 14191 (17 May 2011) (stating that this principle of subordination ensured that a second superior could not meddle in the Accused's work); Ljubomir Obradović, T. 11945–11946 (29 March 2011).

318 The Counter-Intelligence Group was an independent unit in charge of analysing information and monitoring developments in the entire RS territory, and was headed by Colonel Petar "Pero" Jakovljević. Mikajlo Mitrović, T. 14942–14944 (1 June 2011); Dragomir Keserović, T. 13882–13884 (10 May 2011). The Chamber notes the testimony of Milovanović that the Chief of the Counter-Intelligence Group was Lieutenant-Colonel Čedo Knezević, and that Jakovljević was the chief of the 410th Intelligence Centre. Manojlo Milovanović, T. 14252 (18 May 2011). In light of the consistent evidence of Mikajlo Mitrović and Dragomir Keserović, the Chamber considers that Milovanović's testimony on this point does not reflect the accurate situation with respect to who was the commander in 1995.

319 Dragomir Keserović, T. 13881 (10 May 2011), T. 14121 (16 May 2011); Ljubomir Obradović, T. 11962 (29 March 2011); Milomir Savčić, Ex. P02418, PT. 15241 (12 September 2007); Ex. P02265. There was also an officer responsible for personal security of key Main Staff officers. Ex. P02475, p. 17.

320 Milenko Todorović, T. 13010–13011 (19 April 2011); Mikajlo Mitrović, T. 14941, 14988 (1 June 2011); Milorad Birčaković, Ex. P01746, T. 11012 (7 May 2007).

321 Milomir Savčić, Ex. P02418, PT. 15260 (12 September 2007). *See also* Mikajlo Mitrović, T. 14941, 14945 (1 June 2011); Ex. P02265.

322 Dragomir Keserović, T. 13866–13867 (10 May 2011).

323 Ex. P02226. *See also* Dragomir Keserović, T. 13882 (10 May 2011); Ex. P02430.

106. The Security Administration provided specialist management for security organs, and organised and directed their work for security.[324] As noted above, the primary task of the security organs was counter-intelligence, namely:

> detecting and preventing activities aimed at subverting or disrupting the social order established by the Constitution of the Socialist Federative Republic of Yugoslavia [...] and threatening the country's security, [carried out in or against the armed forces] within the country or from abroad, and [...] detecting and preventing activities aimed at breaching the secrecy of the plans and preparations of the armed forces for the country's defence.[325]

This task entailed preventing sabotage and terrorist incursions,[326] as well as interrogating and securing POWs by using the MP.[327]

107. In carrying out counter-intelligence tasks, the Security Administration was engaged in "strategic and operative concealment",[328] ensuring that military information at the disposal of the RS and about the VRS would not leak outside the organisation.[329] For this purpose, the Accused as the Chief of the Sector for Intelligence and Security, was "to cover up the intention of the VRS, to make the enemy believe or to make the enemy reach wrong conclusions".[330]

108. The remaining work of the Security Administration, as stated above,[331] included the MP, "criminal-legal tasks", and administrative matters.[332] With regard to the MP, the Security Administration organised and monitored the training of MP units and its subordinate security

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324 Ex. D00203, p. 23, para. 57; Milenko Todorović, T. 13063–13064 (19 April 2011), T. 13079 (20 April 2011). *See also* Ex. D00203, pp. 23–26; Milomir Savčić, Ex. P02418, PT. 15260 (12 September 2007).

325 Ex. D00203, pp. 6–10, Chapter 1 (Competence and Tasks of Security Organs), para. 1. *See also* Petar Salapura, T. 13850–13852 (9 May 2011); Ex. D00202, p. 30, Art. 29; Ljubomir Obradović, T. 12191–12192 (31 March 2011); Mikajlo Mitrović, T. 14933, 14935–14936 (1 June 2011); Dragomir Keserović, T. 13884 (10 May 2011) (testifying that Beara spent most of his time dealing with counter-intelligence activities). According to the RS constitution, the RS constitutional order is based on the "guarantee and protection of human freedom and rights with respect to international standards, ensuring national equality [and] protection of rights of ethnic groups and other minorities". Ex. P02215, p. 2, Art. 5. Specifically the constitution enshrines human rights and freedom of citizens of the Republic, including inviolability of human life, freedom and personal safety, human dignity, physical an and spiritual dignity, protection from cruel, inhuman or humiliating treatment or punishment, and unlawful detention. Ex. P02215, p. 3, Arts. 10–15; Petar Salapura, T. 13850–13854 (9 May 2011).

326 Mikajlo Mitrović, T. 14936 (1 June 2011).

327 *See infra* para. 110. *See also* Ex. P01970 (Drina Corps Security Organ's instruction regarding arrest and detention of POWs and other persons, signed by Popović and dated 15 April 1995, transmitting to the corps subordinate units a telegram from the Security Administration, which outlines the procedure during the detention or arrest of POWs and other persons); Tomasz Blaszczyk, T. 3762 (9 July 2010).

328 Ex. D00203, pp. 8–9, para. 10 ("security organs participate, within the scope of their competence, in evaluating the level of secrecy and the regulation of security and self-protection measures for important military information, operations, territories and zones, features of particular importance for the country's defence and certain duties and tasks of particular importance for the armed forces [...]. Within the scope of their competence, security organs participate in planning work relating to the formulation of mobilisation plans, plans for the use of the armed forces, plans for strategic and operative concealment and other plans for the country's defence, and also in the security protection of these plans.").

329 Manojlo Milovanović, T. 14243–14244, 14249 (17 May 2011).

330 Manojlo Milovanović, T. 14246 (17 May 2011). *See also* Ljubomir Obradović, T. 12052–12053 (30 March 2011); Ex. P02876, p. 28, Art. 30.

331 *See supra* para. 103.

332 Ljubomir Obradović, T. 12190, 12192–12193 (31 March 2011); PW-057, Ex. P02279 (confidential), PT. 16689–

organs,[333] as well as selection and recruitment of personnel for both organs.[334] The lower security organs, which were responsible for the activities of their MPs, made a recommendation for the use of their MP to their superior organs.[335] The criminal-legal tasks involved collecting and securing evidence of crimes perpetrated within the unit—such crimes included "criminal offences against humanity and international law"—submitting such evidence to investigative bodies, and arresting individuals accused of such crimes.[336] The subordinate security organs were required to keep their superior security organ abreast of developments and send reports.[337] The superior security organs monitored the professionalism and lawfulness of the conduct of their subordinate organs.[338]

109. The security organs under the professional command of the Security Administration[339] were directly subordinated to the commanders of the Corps or Brigades in which they operated.[340] With regard to professional activities, however, the Security Administration organised, supervised, monitored, and directed the security organs of the subordinate Corps and other units,[341] including the 65th Protection Regiment.[342]

16690 (closed session) (22 October 2007); Ex. P01112, p. 1. *See also* Ex. P02475, p. 17.

333 Ljubomir Obradović, T. 12158, 12161–12163, 12196 (31 March 2011); Ex. D00202, p. 31; Ex. D00203, p. 6; Dragomir Keserović, T. 13873 (10 May 2011), T. 14063 (12 May 2011); Ex. P02876, p. 29, para. 11; Mikajlo Mitrović, Ex. P02259, PT. 25049–25050 (2 September 2008).

334 Ex. P02876, p. 29, Art. 31, para. 8; Dragomir Keserović, T. 13873 (10 May 2011).

335 Ex. D00203, p. 11, para. 23 ("An officer of a security organ of a command, unit, institution or staff of the armed forces provides specialist management for a military police unit. He recommends the use of the military police unit to the senior officer of the command, unit, institution, or staff, and he is responsible to him for the state and activity of the unit").

336 Ex. P02478 (Military Prosecutor's Office of the VRS Main Staff Guidelines for Determining Criteria for Criminal Prosecution, 1992); Ljubomir Obradović, T. 12193–12194 (31 March 2011). *See also* Ex. P01760. If the crimes are within the competence of military courts, security organs had the authority to arrest a person and deliver him to an investigating judge of a military court, unit, or institution. Ex. D00203, p. 18, para. 43. *See also* Ex. P02603.

337 Dragomir Keserović, T. 13903–13904 (10 May 2011), Separate from the daily report sent by the Corps Commands, a security organ in the Corps would send a daily security report to the Sector for Intelligence and Security Affairs of the VRS Main Staff; the daily security report would contain detailed information about the security situation in the Corps area, including any counter-intelligence issues which the Corps received from subordinate units. Mikajlo Mitrović, T. 14949–14950, 14952–14953 (1 June 2011). In turn the Sector for Intelligence and Security Affairs also sent daily intelligence and security information to the corps commands. Mikajlo Mitrović, T. 14951 (1 June 2011). The security departments in the Corps were directly connected with the Security Administation through an encrypted/protected computer-based communication system called "NEVEN". Mikajlo Mitrović, T. 14954–14955 (1 June 2011). With regard to activities of MPs, they would report directly to their supeior command, instead of reporting to the security organs. Mikajlo Mitrović, T. 14979–14980 (1 June 2011); Ex. D00276 p. 97.

338 Mikajlo Mitrović, Ex. P02259, PT. 25074–25076 (2 September 2008) (stating that while a commander had the right to ask for the dismissal or replacement of the security organ and bring the problems to the superior command, it was the superior in the security organs who monitored the professionalism and lawfulness of his subordinate security organs). *See also* Dragomir Keserović, T. 13903–13904 (10 May 2011) (stating that the subordinate security organs were required to keep their superior security organ abreast of developments and send reports as needed).

339 Mikajlo Mitrović, T. 14942, 14945 (1 June 2011); Ex. P02265.

340 Ljubomir Obradović, T. 12164, 12166, 12172, 12194 (31 March 2011); Mikajlo Mitrović, T. 14958–14959 (1 June 2011), T. 15036 (2 June 2011); Mikajlo Mitrović, Ex. P02259, PT. 25049–25052 (2 September 2008); Ex. D00203, p. 11, para. 23.

341 Ljubomir Obradović, T. 12164, 12195 (31 March 2011); Dragomir Keserović, T. 14051, 14063 (12 May 2011); Mikajlo Mitrović, T. 14958–14960 (1 June 2011); Ex. D00276, p. 87; Ex. P02265; Mikajlo Mitrović, Ex. P02259, PT. 25049–25050 (2 September 2008); Milomir Savčić, Ex. P02418, PT. 15260 (12 September 2007);

(i) MP

110. The MP was composed of the specially trained and equipped units of the armed forces[343] which were tasked with providing security for facilities, locations, and personnel; fighting infiltrated sabotage and terrorist groups; as well as regulating and controlling traffic.[344] The MP also escorted and guarded those arrested for crimes[345] or POWs.[346] The MP had "crime departments", which would interrogate POWs.[347] In addition, contrary to the rules and regulations,[348] there were instances in which MP were engaged in active combat.[349]

111. MP units attached to the Corps or Brigades were directly subordinated to their respective commanders.[350] At all command levels, however, the MP units were professionally controlled by the security organs.[351] The security organs would also make proposals to the respective commanders regarding the use of the MP.[352]

Ex. P02876, p. 30, Art.31, para. 16. Also subordinated to the Security Administration was the Department of Security of the RS Ministry of Defence. Mikajlo Mitrović, T. 14941–14942 (1 June 2011); Ex. P02265.

342 *See infra* paras. 112–114.

343 Milenko Todorović, T. 13039–13040 (19 April 2011); Dragomir Keserović, T. 14067 (12 May 2011).

344 Mikajlo Mitrović, Ex. P02259, PT. 25054 (2 September 2008); Milenko Todorović, T. 13040 (19 April 2011); Ljubomir Obradović, T. 12193 (31 March 2011); Momir Nikolić, T. 12486, 12492 (7 April 2011); Ex. P01297, pp. 8, 10; Ex. D00203, p. 11, para. 23. *See also* Tomasz Blaszczyk, T. 3763–3764 (9 July 2010).

345 Dragomir Keserović, T. 14098–14099 (16 May 2011); Mikajlo Mitrović, Ex. P02259, PT. 25055 (2 September 2008); Ex. P01297, pp. 21–22.

346 Mikajlo Mitrović, Ex. P02259, PT. 25055 (2 September 2008); Ex. P01297, p. 22; Ljubomir Obradović, T. 12193–12194 (31 March 2011) (testifying that at certain levels, the MP also guarded and interviewed POWs); Dragomir Keserović, T. 13877 (10 May 2011) (stating that escorting POWs was different from the task of guarding POWs, which was not exclusively within the purview of the security organ). Some tasks would require coordination between the unit commander and security officer; if there was a need to transfer large numbers of POWs, it would be the commander who would reach the decision regarding the transfer locations, the logistics organ would provide for the means of transport, and the commander would either task the security officer or the MP directly with securing the POWs and escorting them. Dragomir Keserović, T. 13878–13880 (10 May 2011), T. 14099–14100 (16 May 2011).

347 Ljubomir Obradović, T. 12193–12194 (31 March 2011).

348 *See, e.g.*, Zoran Malinić, T. 15306–15307 (8 June 2011); Milomir Savčić, T. 15763 (21 June 2011).

349 *See infra* para. 114.

350 Ljubomir Obradović, T. 12170–12172 (31 March 2011); Momir Nikolić, T. 12486, 12492 (7 April 2011); Milenko Todorović, T. 12948–12949 (18 April 2011), T. 13050 (19 April 2011); Dragomir Keserović, T. 14068 (12 May 2011); Mikajlo Mitrović, Ex. P02259, PT. 25052 (2 September 2008); Ex. P01297, p. 10, para. 12 ("The officer in charge of the military unit and institution within whose establishment the military police unit is placed or to which it is attached commands and controls the military police."); Ex. D00203, p. 11, para. 23. A security officer generally could not assume any command role vis-à-vis the MP and would be duty-bound to inform the commander of the unit about all of their activities. Dragomir Keserović, T. 13881 (10 May 2011).

351 Ex. P01297, p. 10, para. 13; Ex. D00203, p. 11, para. 23; Ljubomir Obradović, T. 12170–12171 (31 March 2011); Momir Nikolić, T. 12252 (4 April 2011), T. 12482–12486 (7 April 2011); Milenko Todorović, T. 13042–13043, 13049 (19 April 2011); Dragomir Keserović, T. 13873–13874 (10 May 2011), T. 14049, 14070–14071 (12 May 2011); Mikajlo Mitrović, Ex. P02259, PT. 25051–25052, 25056–25057 (2 September 2008); Mikajlo Mitrović, T. 14978 (1 June 2011); Zoran Malinić, T. 15307 (8 June 2011); Petar Škrbić, T. 18742, 18745 (2 February 2012); Ex. P02876, p. 28, Art. 31. *See also* Ex. P02609, p. 2.

352 Ex. P01297, p. 10, para. 13; Ex. D00203, p. 11, para. 23; Ljubomir Obradović, T. 12171 (31 March 2011); Momir Nikolić, T. 12249–12253 (4 April 2011); Milenko Todorović, T. 13036, 13043 (19 April 2011), T. 13075, 13078 (20 April 2011). In the areas where the security officers directly controlled the MP services, however, the security officer could pass on some tasks to the commander of the MP unit without first consulting the commander. Dragomir Keserović, T. 13873–13874 (10 May 2011). *See also* Milenko Todorović, T. 12948 (18 April 2011),

(ii) 65th Protection Regiment

112. As an independent unit of the Main Staff,[353] the 65th Motorised Protection Regiment ("65th Protection Regiment") was comprised of several units, including an MP battalion.[354] In 1995 there were in total approximately 700 members of the 65th Protection Regiment.[355] Its headquarters was located in Crna Rijeka where the VRS Main Staff was also based.[356] The main task of the Regiment was to provide security to the VRS Main Staff personnel,[357] though it was also deployed for combat activities.[358]

113. In 1995 the Commander of the 65th Protection Regiment was Lieutenant-Colonel Milomir Savčić.[359] Lieutenant-Colonel Jovo Jazić was the Chief of Staff and Deputy Commander.[360] As there was no assistant for intelligence and security in the regiment, the Security Administration was directly in charge of handling all relevant matters concerning the Regiment, including the work of the MP Battalion.[361] The 65th Protection Regiment was directly subordinated to and received orders from Mladić; in respect of professional activities, it was subordinated to Beara.[362]

T. 13073 (20 April 2011); Ex. D00202, p. 4, Art. 6.

353 Petar Salapura, T. 13580 (3 May 2011); Dragomir Pećanac, T. 18064 (12 January 2012); Milomir Savčić, Ex. P02418, PT. 15229 (11 September 2007); Zoran Malinić, T. 15301–15302, 15305 (8 June 2011); Ex. P02473, p. 29; Ex. P02471, p. 107; Adjudicated Fact 143. *See also* Ljubomir Obradović, T. 11966 (29 March 2011); Ex. P02154 (Savčić's order dated 23 December 1993, instructing the Chief of Staff of the 65th Protection Regiment to report orally and on a daily basis to Miletić of the VRS Main Staff).

354 Milomir Savčić, Ex. P02418, PT. 15234–15235 (12 September 2007); Zoran Malinić, T. 15303–15304 (8 June 2011).

355 Zoran Malinić, T. 15303 (8 June 2011). In Borike, which was in the zone of responsibility of the Rogatica Brigade, there were approximately 30 soldiers of the 65th Protection Regiment in July 1995. Milomir Savčić, T. 15808–15809 (21 June 2011).

356 Zoran Malinić, T. 15300 (8 June 2011); Ljubomir Obradović, T. 11962–11963 (29 March 2011) (stating that the 65th Protection Regiment was also based in Zalukovik); Milomir Savčić, Ex. P02418, PT. 15227 (11 September 2007).

357 Ljubomir Obradović, T. 11962 (29 March 2011); Zoran Malinić, T. 15302 (8 June 2011); Milomir Savčić, Ex. P02418, PT. 15229 (11 September 2007); Milomir Savčić, T. 15780–15785 (21 June 2011); Ex. P02430; Ex. P02431.

358 Milomir Savčić, Ex. P02418, PT. 15233 (12 September 2007); Adjudicated Fact 143.

359 Milomir Savčić, Ex. P02418, PT. 15325 (13 September 2007); Ljubomir Obradović, T. 11963 (29 March 2011); Mirko Trivić, Ex. P01197, PT. 11861 (21 May 2007); Zoran Malinić, T. 15305 (8 June 2011); Ex. P02154; Ex. P02471, p. 107.

360 Milomir Savčić, Ex. P02418, PT. 15233 (12 September 2007); Milomir Savčić, T. 15740 (21 June 2011), T. 15855 (22 June 2011); Zoran Malinić, T. 15305 (8 June 2011). Savčić was absent for the treatment of his serious wound from October 1994 to June 1995, during which time Jazić stood in for Savčić. Milomir Savčić, Ex. P02418, PT. 15234 (12 September 2007), PT. 15322–15323 (13 September 2007); Milomir Savčić, T. 15786 (21 June 2011), T. 15855 (22 June 2011).

361 Milomir Savčić, Ex. P02418, PT. 15234, 15239–15240 (12 September 2007); Milomir Savčić, T. 15758–15759 (21 June 2011); Zoran Malinić, T. 15305–15307 (8 June 2011).

362 Milomir Savčić, Ex. P02418, PT. 15240 (12 September 2007); Ljubomir Obradović, T. 11962 (29 March 2011); Zoran Malinić, T. 15301–15302, 15305 (8 June 2011); Petar Škrbić, T. 18745 (2 February 2012) (stating that the professional aspect of its task involved training, and deployment, which was under the auspices of the Security Administration); Ex. P02473, p. 29. In May 1995, a company of the 65th Protection Regiment was ordered to be re-subordinated to the Drina Corps in order to execute a combat plan ordered by the VRS Main Staff. Ex. P02431 (Krstić's request dated 20 May 1995, which directs that per Mladić order dated 12 May 1995 regarding the engagement of the 65th Protection Regiment and MUP forces, a unit of the 65th Protection Regiment as the strength of a company be re-subordinated to the Drina Corps for carrying out active combat operations towards

114. The MP Battalion of the 65th Protection Regiment was headquartered at the school in Nova Kasaba on the Bratunac–Konjević Polje–Milići road.[363] Major Zoran "Zoka" Malinić was the Commander, and Lieutenant or Captain Aleksandar Lučić was his Deputy.[364] While the MP Battalion's main function was to provide security to VRS personnel,[365] it was also deployed in combat operations, and was discharged for other duties and tasks which were not prescribed by rules on the work of MP.[366] There were around 20 soldiers and officers of the MP Battalion in Nova Kasaba.[367] While Malinić received orders primarily from Savčić or, in case of Savčić's absence, Jazić,[368] he also received instructions from the Accused.[369]

(b) Intelligence Administration

115. The Intelligence Administration was headed by Salapura,[370] who was an immediate subordinate of the Accused.[371] The officers in this Administration included Lieutenant-Colonel Jovica Karanović, the Chief of the Analysis Section, Lieutenant-Colonel Radoslav Janković, a desk officer in the Analysis Section, and Lieutenant-Colonel or Major Slobodan Mamlić, the Chief of the Electronic Reconnaissance Section.[372] In July 1995 Captain 1st Class Dragomir Pećanac worked for the Intelligence Administration.[373] Due to the shortage of staff in this Administration, some members of the Security Administration were also tasked with gathering intelligence.[374]

Srebrenica and Žepa as of 15 May 1995); Milomir Savčić, T. 15785–15789 (21 June 2011) (stating that it was not possible to implement this order as the brunt of the forces had been re-subordinated to the commander of the Sarajevo-Romanija Corps at the time), T. 15950–25953 (23 June 2011); Ex. P02432; Ex. D00293.

363 Milomir Savčić, Ex. P02418, PT. 15236 (12 September 2007); Milomir Savčić, T. 15798 (21 June 2011); Dragomir Keserović, T. 13963–13964 (11 May 2011).

364 Zoran Malinić, T. 15302, 15322 (8 June 2011); Milomir Savčić, Ex. P02418, PT. 15233–15235, 15278 (12 September 2007); Mirko Trivić, Ex. P01197, PT. 11861 (21 May 2007).

365 Zoran Malinić, T. 15306 (8 June 2011). *See also* Milomir Savčić, Ex. P02418, PT. 15229 (11 September 2007), PT. 15232–15233 (12 September 2007); Milomir Savčić, T. 15780 (21 June 2011).

366 Zoran Malinić, T. 15306–15307 (8 June 2011); Milomir Savčić, T. 15763 (21 June 2011). *See, e.g.*, Ex. P00125.

367 Zoran Malinić, T. 15309–15310 (8 June 2011). *See also* Milomir Savčić, Ex. P02418, PT. 15236–15237 (12 September 2007) (stating that not more than about ten members served in Nova Kasaba); Milomir Savčić, T. 15798 (21 June 2011) (stating that there were ten to 15 members in Nova Kasaba).

368 Zoran Malinić, T. 15309–15311 (8 June 2011); Milomir Savčić, Ex. P02418, PT. 15239–15240 (12 September 2007).

369 Ex. P02430; Milomir Savčić, T. 15782–15783 (21 June 2011).

370 Petar Salapura, T. 13467–13468, 13528 (2 May 2011); Milenko Todorović, T. 13010–13011 (19 April 2011); Mikajlo Mitrović, T. 14941 (1 June 2011); Ljubomir Obradović, T. 11949, 11960–11961 (29 March 2011); Dražen Erdemović, Ex. P00215, PT. 10934–10935, 10950 (4 May 2007); Dražen Erdemović, T. 1878 (17 May 2010); Dragomir Pećanac, T. 18054 (private session) (12 January 2012).

371 Petar Salapura, T. 13474, 13484–13485 (2 May 2011); Ljubomir Obradović, T. 11949, 11962 (29 March 2011).

372 Petar Salapura, T. 13475–13476 (2 May 2011).

373 Dragomir Pećanac, T. 18060–18061 (private session) (12 January 2012); Zoran Čarkić, T. 12899 (14 April 2011). Milovanović testified that during the same period Pećanac was assigned to the Security Administration. Manojlo Milovanović, T. 14253–14254 (18 May 2011). *See also* Ex. P02226; Ex. P02471, p. 107. Other witnesses testified different or less precisely about the position Pećanac held. *See, e.g.*, Petar Salapura, T. 13500 (2 May 2011) (stating that Pećanac was the "chief of General Mladić's office" in July 1995), T. 13812–13813 (5 May 2011) (stating that Pećanac was a member of the 410th Intelligence Centre before "Mladić requested him to join his office"); Milenko Todorović, T. 13008–13011 (19 April 2011) (stating that Pećanac was in the Security and Intelligence Administrations in 1995); Petar Škrbić, T. 18799 (2 February 2012) (stating that Pećanac was "part of

116. The Intelligence Administration was primarily in charge of collecting intelligence on the enemy,[375] as well as on the international community.[376] This included analysing daily reports, obtaining reports from subordinated intelligence officers in the Corps and Brigade units, and conducting active and passive information gathering.[377]

117. The Intelligence Administration received information through daily reports from the Corps and from the 410th Intelligence Centre.[378] The Analysis Section of the Intelligence Administration used these daily reports to provide a daily summary to, among others, the Accused who would then decide to whom the information should be transmitted.[379]

118. Along the professional chain of command the Intelligence Administration directed all of the subordinate intelligence organs of the subordinate Corps and Brigades as well as the 410th Intelligence Centre and the 10th Sabotage Detachment.[380]

(i) 410th Intelligence Centre

119. The 410th Intelligence Centre was located within the Banja Luka garrison and headed by Colonel Čedo Knezević.[381] The Centre gathered, analysed, and prioritised information, and determined who in the system of command should be informed about the gathered data.[382] It was directly subordinated to Mladić.[383]

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the personal security for the Main Staff commander"). The Chamber notes that Pećanac had various roles within the Main Staff between 1992 and 1995, which included a position as clerk in the Security Administration. Dragomir Pećanac, T. 18042 (private session) (12 January 2012). Having considered all the relevant evidence, the Chamber finds that Pećanac's account reflects his actual position in July 1995.

374 Petar Salapura, T. 13474 (2 May 2011).

375 Petar Salapura, T. 13477 (2 May 2011); Ljubomir Obradović, T. 12190–12191 (31 March 2011); PW-057, Ex. P02279 (confidential), PT. 16689–16690 (closed session) (22 October 2007); Ex. D00248, p. 16. *See also* Momir Nikolić, T. 12474–12475 (7 April 2011); Ex. D00202, p. 16.

376 Petar Salapura, T. 13482 (2 May 2011), T. 13638–13639, 13722 (4 May 2011).

377 Ljubomir Obradović, T. 11949, 11962, 11971 (29 March 2011), T. 12191 (31 March 2011); Petar Salapura, T. 13467–13468, 13482 (2 May 2011), T. 13722 (4 May 2011); Dragomir Keserović, T. 13881 (10 May 2011), T. 14120 (16 May 2011); Manojlo Milovanović, T. 14243 (17 May 2011) (describing the "active and passive" information gathering to consist of the collection of "information by analyzing daily reports, media" and the "so-called forcible gathering of information by moving combat deployment and similar activities"); Mikajlo Mitrović, T. 14932–14933 (1 June 2011); Ex. D00276, p. 25.

378 Petar Salapura, T. 13483 (2 May 2011).

379 Petar Salapura, T. 13483 (2 May 2011).

380 Dragomir Keserović, T. 14063 (12 May 2011); Mikajlo Mitrović, T. 14940–14942, 14945–14947 (1 June 2011); Ex. P02265; Ex. P02876, p. 30, Art. 32; Ex. D00248, p. 18, Chapter III, para. 14. *See also* Ex. P01112, p. 1.

381 Petar Salapura, T. 13499 (2 May 2011); Mikajlo Mitrović, T. 14946–14947 (1 June 2011); Ex. D00341, p. 106. *See supra* n. 318.

382 Manojlo Milovanović, T. 14252 (18 May 2011).

383 Petar Škrbić, T. 18566 (30 January 2012).

(ii) 10th Sabotage Detachment

120. As an independent VRS Main Staff unit directly subordinated to Mladić,[384] the 10th Sabotage Detachment engaged in both sabotage and reconnaissance activities.[385] Commanded by 2nd Lieutenant Milorad Pelemiš,[386] the 10th Sabotage Detachment was comprised of two platoons—the Bijeljina platoon and the Vlasenica platoon—each consisting of approximately 30 members in 1995.[387] The 10th Sabotage Detachment could be deployed anywhere in the zone of operations of the VRS on the basis of a proposal from the Intelligence Administration or requests from the various Corps.[388]

121. Due to its reconnaissance tasks the 10th Sabotage Detachment was professionally subordinated to the Intelligence Administration.[389] The Intelligence Administration controlled the engagement of this unit by making proposals in this regard to Mladić.[390] Salapura was in charge of the professional monitoring of the unit and reported to the Accused about all of its operations.[391]

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384 Petar Salapura, T. 13486 (2 May 2011), T. 13837 (9 May 2011); Ljubomir Obradović, T. 11972 (29 March 2011); Dragan Todorović, Ex. P02588, PT. 13992, 13994 (21 August 2007). *See also* Ex. P02265; Mikajlo Mitrović, T. 14947 (1 June 2011); Petar Salapura, T. 13671 (4 May 2011).

385 Petar Salapura, T. 13837 (9 May 2011); Ex. P02213, p. 14; Dražen Erdemović, Ex. P00215, PT. 10935 (4 May 2007); Dražen Erdemović, T. 1879 (17 May 2010); Ex. P02473, p. 30; PW-057, Ex. P02279 (confidential), PT. 16152 (closed session) (10 October 2007). *See also* Adjudicated Fact 143. According to the JNA Instructions for Land-based Diversionary Operations issued in 1976, "Sabotage is action which is carried out against the enemy in the form of the broadest possible resistance of the population against work organised by the enemy for his needs in temporarily-occupied territory. Its objective is to undermine the state of morale and political determination of the enemy and weaken his economic and military potential. [...] Sabotage should encompass all areas of activity which are useful for the enemy—from traffic features and activities to industrial installations in which the enemy is producing weapons, materiel, and technical equipment or using raw materials." Ex. P02213, p. 12. Reconnaissance, on the other hand, involves actions behind enemy lines to gather information and alert other troops about approaching enemy forces. Dražen Erdemović, T. 1880 (17 May 2010) (detailing an operation in 1995 to alert the military, calling it "a sort of reconnaissance sortee").

386 Dražen Erdemović, Ex. P00215, PT. 10935 (4 May 2007); Dražen Erdemović, T. 1913 (17 May 2010); Dragan Todorović, Ex. P02588, PT. 13994 (21 August 2007); Ex. P00233; Erin Gallagher, T. 6673–7764 (21 October 2010), Ex. P00624, p. 18. *See also* Mikajlo Mitrović, T. 14946 (1 June 2011) (testifying that Pelemiš was a Lieutenant).

387 Dražen Erdemović, Ex. P00215, PT. 10932, 10934 (4 May 2007). The Vlasenica Platoon was deployed in Dragaševac and the Bijeljina Platoon was deployed in Bijeljina. Dragan Todorović, Ex. P02588, PT. 13992 (21 August 2007). *See also* Dragomir Pećanac, T. 18133–18134 (16 January 2012). With regard to specific members of each platoons, see Dražen Erdemović, Ex. P00215, PT. 10955–10960, 10996, 11001–11002 (4 May 2007); Ex. P00226; Ex. P00228; Ex. P00229; Ex. P00230; Ex. P00232; Erin Gallagher, T. 6665–6666 (21 October 2010); Ex. P00624, p. 11.

388 Petar Salapura, T. 13526 (2 May 2011). However, a Corps intelligence officer could command an operation by the 10th Sabotage Detachment only when the unit was re-subordinated to the Corps Command for a certain mission. Petar Salapura, T. 13493 (2 May 2011).

389 Ljubomir Obradović, T. 11960–11961 (29 March 2011); Dragomir Pećanac, T. 18133–18134 (16 January 2012); Dražen Erdemović, Ex. P00215, PT. 10934–10935, 10950 (4 May 2007); Dražen Erdemović, T. 1877 (17 May 2010); Dragan Todorović, Ex. P02588, PT. 13992 (21 August 2007).

390 Ljubomir Obradović, T. 11960–11961 (29 March 2011); Petar Salapura, T. 13486–13487 (2 May 2011); Dragomir Pećanac, T. 18134 (16 January 2012).

391 Petar Salapura, T. 13492, 13528 (2 May 2011). *See also* Ljubomir Obradović, T. 11962 (29 March 2011). The Accused examined proposals and suggestions made by Salapura and when he agreed, he would bring them to Mladić. Petar Salapura T. 13487–13488 (2 May 2011).

122. In July 1995 the members of the 10th Sabotage Detachment had several uniforms, including the VRS uniform, a black overalls uniform, the HVO uniform, and U.S. and Greek Army uniforms.[392] The insignia worn by members of this unit was a white eagle with the words "10th Sabotage Detachment".[393]

C. Drina Corps

123. Formed along the lines of the former JNA corps, the VRS Drina Corps and its subordinate units adopted JNA operating methodologies outlined in combat regulations.[394] The Drina Corps Headquarters was established first in Han Pijesak and later moved to Vlasenica.[395] In July 1995, the Drina Corps IKM was in Pribićevac,[396] and later Krivače.[397] Around 10 or 11 July 1995, the Drina Corps established a second IKM in Bratunac town in the same facility used by the Bratunac Brigade as its headquarters.[398] The enclaves of Srebrenica and Žepa were within the area of responsibility of the Drina Corps.[399]

124. In July 1995 the Drina Corps was composed of the following subordinate units:[400] the 1st Zvornik Infantry Brigade ("Zvornik Brigade"); the 1st Bratunac Light Infantry Brigade ("Bratunac Brigade"); the 1st Vlasenica Light Infantry Brigade ("Vlasenica Brigade"); the 2nd Romanija Motorized Brigade ("2nd Romanija Brigade"); the 1st Birač (or Sekovići) Infantry Brigade ("Birač Brigade"); the 1st Milići Light Infantry Brigade ("Milići Brigade"); the 1st Podrinje Light Infantry Brigade ("Rogatica Brigade"); the 5th Podrinje Light Infantry Brigade (or "Višegrad/Goražde Brigade");[401] the 1st Skelani Separate Infantry Battalion ("Skelani Battalion"); the 5th Mixed

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392 Dražen Erdemović, Ex. P00215, PT. 10939–10940, 10955 (4 May 2007). *See also* Dragan Todorović, Ex. P02588, PT. 14062 (21 August 2007).

393 Dražen Erdemović, Ex. P00215, PT. 10955–10957 (4 May 2007); Ex. P00230.

394 Ex. P02470, pp. 6–8; Ex. P02472, pp. 5–6, 11; PW-057, Ex. P02279 (confidential), T. 15748 (private session) (25 September 2007): Ex. P02288 (1984 JNA Brigade Rules); Mihajlo Galić, T. 16031 (4 July 2011); Adjudicated Fact 132. *See also* Adjudicated Fact 131.

395 Adjudicated Fact 133. *See also* Ex. P02473, p. 11; Ex. D00261, p. 10 (both documents referring to Vlasenica as the headquarters). "Zlatar" was the code name used to refer to the Drina Corps Command in Vlasenica. Ex. P00763; Milanko Jovičić, Ex. P01701, PT. 11488–11489 (14 May 2007); Richard Butler, T. 16409 (11 July 2011), T. 16754 (18 July 2011); Adjudicated Fact 141. The extension number for the Drina Corps Commander was 385. Richard Butler, T. 16747 (18 July 2011).

396 Božo Momčilović, Ex. P01809, PT. 14073, 14077, 14098 (22 August 2007); Richard Butler, T. 16602 (13 July 2011).

397 Richard Butler, T. 16850 (19 July 2011), T. 17447–17448, 17450 (31 August 2011); Ex. P02572; Ex. P02573; Mitar Lazarević, T. 8583–8586 (7 December 2010); Ex. P01225; Ex. P00104, pp. 12–13. *See also* Ex. P02207; Richard Butler, T. 16850 (19 July 2011); Ex. D00156. The code name of Krivače IKM was "Uran". Ex. P00763.

398 Richard Butler, T. 16602 (13 July 2011); Ex. P02518.

399 Ex. P00104, p. 5. *See also* Adjudicated Fact 41 ("between 1,000 and 2,000 soldiers from three Drina Corps Brigades were deployed around the enclave").

400 Ex. P02473, pp. 23–29; Ex. P02471, p. 108; Ljubomir Obradović, T. 11964–11965 (29 March 2011); Mile Simanić, T. 9423 (3 February 2011); Božo Momčilović, Ex. P01809, PT. 14074, 14130 (22 August 2007); Mirko Trivić, Ex P01197, T. 11795, 11803 (18 May 2007), T. 11976 (23 May 2007); Milenko Lazić, Ex. P02733, T. 21805–21806 (5 June 2008); PW-074, Ex. P00629 (confidential), PT. 32567–32568 (private session) (10 March 2009); Adjudicated Fact, 138.

401 Also called the 5th Podrinje Brigade. Adjudicated Fact 138.

Artillery Regiment; the 5th Engineering Battalion;[402] the 5th Communications Battalion; and the 5th Military Police Battalion ("Drina Corps Military Police Battalion").[403] These units were under the direct command and control of a Corps Commander.[404]

125. Živanović, who was a General Major in 1995, assumed the role of Drina Corps Commander from the time of its formation until he was replaced by the then-Chief of Staff General Major Radislav Krstić on 13 July 1995.[405] Colonel Svetozar Andrić was Chief of Staff.[406]

126. There were three Assistant Commanders in the Drina Corps:[407] Lieutenant Colonel Vujadin Popović, Assistant Commander for the Department of Security ("Drina Corps Security Organ"); Colonel Slobodan Cerović, Assistant Commander for the Department of Morale, Legal, and Religious Affairs; and Colonel Lazar Aćamović, Assistant Commander for the Department of Rear Services.[408]

127. The Corps Staff, which was under the Chief of Staff, consisted of a few organs, including the Section for Operations and Training headed by Colonel Milenko Lazić;[409] the Section for Reinforcement and Personnel Matters headed by Lieutenant Colonel Radenko Jovičić;[410] and the Intelligence Section, headed by Lieutenant Colonel Svetozar Kosorić, with Major Pavle Golić as an Intelligence Officer.[411]

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402 The 5th Engineering Battalion, a service-providing unit, was tasked with construction work and military activities—mine clearance, laying minefields, and other activities more related to the military purpose of the battalion. Mile Simanić, T. 9420–9422, 9438 (3 February 2011).

403 The Drina Corps MP was commanded by Lieutenant or 2nd Lieutenant Ratko Vujović. PW-074, Ex. P00629 (confidential), PT. 32567–32568 (private session) (10 March 2009). In the professional chain of command, this unit was subordinated to Popović. Milenko Lazić, Ex. P02733, PT. 21742 (4 June 2008). *See also* Ex. P02473, p. 24.

404 Ex. P02473, p. 24; Ex. D00202, p. 4, Art. 6.

405 Ex. P02357; Ex. P02536; Ex. P02540; Ex. P02867; Ex. P02868; Richard Butler, T. 16709 (14 July 2011), T. 16718, 16753–16754 (18 July 2011); Petar Škrbić, T. 18771–18776 (2 February 2012); Ex. P02473, pp. 11, 22, 92, 98–99; Adjudicated Facts 134, 136. *See also* Erin Gallagher, T. 6662–6665, 6672–6673 (21 October 2010); Ex. P00624, pp. 9, 11, 15.

406 Ex. P02357; Ex. P02540; Ex. P02868; Ex. P02473, pp. 22, 92; Richard Butler, T. 16753–16754 (18 July 2011); Petar Škrbić, T. 18771–18772 (2 February 2012).

407 Ex. P02473, pp. 22–23; Ex. P02471, p. 108; Mikajlo Mitorović, T. 14989 (1 June 2011); Milorad Birčaković, Ex. P01746, T. 11012 (7 May 2007); Božo Momčilović, Ex. P01809, PT. 14072 (22 August 2007); PW-057, Ex. P02279 (confidential), T. 15768 (closed session) (25 September 2007); PW-074, Ex. P00629 (confidential), PT. 32568 (private session) (10 March 2009); Richard Butler, T. 16700 (14 July 2011); Adjudicated Facts 135–136. *See also* Erin Gallagher, T. 6668, 6672–6673, 6685 (21 October 2010), Ex. P00624, pp. 15, 19, 49 (Srebrenica Trial Video depicting Popović).

408 Rajko Krsmanović was the Chief of the Transportation Service in Rear Services. Ex. P02473, p. 23; Ex. P02471, p. 108.

409 Milenko Lazić, Ex. P02733, PT. 21722–21724 (4 June 2008).

410 Ex. P02357; Ex. P02540; Ex. P02471, p. 108.

411 Petar Salapura, T. 13525 (2 May 2011); Dragomir Keserović, T. 14131–14132 (16 May 2011). *See also* Erin Gallagher, T. 6687 (21 October 2010); Ex. P00624, p. 51.

128. As the head of the Drina Corps Security Organ, Popović was professionally subordinated to Beara; down the professional line of command, he was a superior to lower security organs of the brigades,[412] as discussed in more detail below.[413]

1. Bratunac Brigade

129. The area of responsibility of the Bratunac Brigade included Nova Kasaba, Potočari, Srebrenica, Zeleni Jadar, and the western edge of the Drina River.[414] The Bratunac Brigade was headquartered within the premises of the Kaolin Bratunac enterprise in Bratunac town.[415]

130. The Bratunac Brigade was initially commanded by Lieutenant-Colonel or Colonel Slavko Ognjenović,[416] who was succeeded by Colonel Vidoje Blagojević sometime in July 1995.[417] Major Novica Pajić was Chief of Staff and Deputy Commander.[418] Under the command and control of Blagojević,[419] the Bratunac Brigade consisted of, *inter alia*, three brigade branches: Rear Service, headed by Assistant Commander Major Dragoslav Trišić; Security and Intelligence, headed by Captain First Class Momir Nikolić;[420] and Morale, Legal, and Religious Affairs, headed by Major Ratomir Jevtić, and four infantry battalions:[421] the "Workers" Battalion; an MP Platoon; Artillery; and Logistics.[422]

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412 *See, e.g.*, Ex. P01970 (Popović's instruction to the chiefs of the subordinate intelligence and security organs, dated 15 April 1995 concerning POWs, indicating that the Drina Corps Department of Security "received a telegram [...] from the VRS Security Administration" outlining the procedure to be applied during the detention or arrest of POWs, based on which Popović issued an instruction to the subordinate organs).

413 *See infra* paras. 130–132, 137–138, 142, 146.

414 Ex. P00104, p. 6. The headquarters was code-named "Badem". Ex. P00763; Adjudicated Fact 141.

415 Momir Nikolić, T. 12230 (4 April 2011) (testifying that the MP Battalion was also located within the same premises).

416 Ex. P02158; Ex. P02473, pp. 26–27. *See also* Ex. P02471, p. 110; Momir Nikolić, T. 12289–12290 (5 April 2011).

417 Momir Nikolić, T. 12228 (4 April 2011), T. 12297 (5 April 2011); PW-075, T. 11288–11289 (private session) (15 March 2011); Ex. P02528; Ex. P02473, pp. 26–27; Ex. P02471, p. 110.

418 Ex. P02473, p. 27.

419 Momir Nikolić, T. 12457–12459 (7 April 2011); Ex. D00148, p. 37, para. 115. *See also* Momir Nikolić, T. 12292 (5 April 2011).

420 *See, e.g.*, Ex. P02473, p. 27.

421 Ex. P02473, pp. 27–28 (indicating that the 4th Battalion was the 8th Battalion of the Zvornik Brigade); Ex. P02471, p. 110; Momir Nikolić, T. 12228 (4 April 2011). *See infra* para. 144. The 1st Battalion was commanded by 2nd Lieutenant Lazar Ostojić and the 4th Battalion was commanded by Captain 1st Class Radika Petrović. Ex. P02473, pp. 27–28; Ex. P02471, p. 110. An intervention platoon called the "Red Berets" belonged to the 3rd Infantry Battalion. Momir Nikolić, T. 12355 (5 April 2011); Richard Butler, T. 16770–16771 (18 July 2011). Nikolić testified that the battalions also had reconnaissance squads, except the 2nd Infantry Battalion and that they were directly subordinated to him. Momir Nikolić, T. 12264–12266 (4 April 2011).

422 Momir Nikolić, T. 12228–12229 (4 April 2011); PW-075, T. 11282 (15 March 2011); Mile Janjić, Ex. P01096, BT. 9756 (24 May 2004); Ex. P01219; Ex. P02722 (showing Mićo Gavrić as Artillery Chief); Ex. P02473, pp. 27–28; Ex. P02471, p. 110. Unlike other brigades, the Bratunac Brigade had a lawyer named Zlatan Čelanović, whose regular duties included instituting proceedings against soldiers who had violated disciplinary rules. Zlatan Čelanović, Ex. P00637, PT. 6626–6627, 6630, 6685 (31 January 2007); Ex. P00646, p. 2; Zlatan Čelanović, T. 3615–3616, 3651 (7 July 2010); Momir Nikolić, T. 12239 (4 April 2011). Čelanović's other duties included compiling data on Bosnian Muslim attacks on the Serb villages around Bratunac and Srebrenica between 1992 and 1995. Zlatan Čelanović, Ex. P00637, PT. 6663–6666 (31 January 2007). Together with Momir Nikolić, Čelanović

131. Momir Nikolić was the Chief of the Security and Intelligence Organ of the Bratunac Brigade[423] and in charge of its battalions' security and intelligence organs.[424] While his immediate and direct superior in the command and control chain was Blagojević, his immediate and direct superiors along the professional chain of command were Popović and Kosorić in the Drina Corps.[425]

132. Under Momir Nikolić, the Security and Intelligence Organ was tasked with organising and implementing security measures as well as detecting and preventing enemy activities against the units that it protected.[426] Due to the combined aspect of its competence, the organ also gathered intelligence about the enemy's activities.[427] Nikolić also acted as a liaison between the Bratunac Brigade and DutchBat, other UNPROFOR representatives, and UNMOs, among others.[428]

133. The MP Platoon of the Bratunac Brigade, which was comprised of approximately 20 to 30 members,[429] was commanded by Sergeant Mirko Janković.[430] As Brigade Commander, Blagojević was Janković's immediate commander;[431] in the professional line of command, Momir Nikolić was his immediate supervisor.[432] Once Blagojević made his decision on a matter concerning the MP

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also carried out the task of identifying possible war crimes suspects among captured Bosnian Muslims. Zlatan Čelanović, T. 3616 (7 July 2010). On occasion, Čelanović was given the special task of inspecting humanitarian convoys going to Srebrenica, helping Momir Nikolić and the MP to search the convoy vehicles, and getting the appropriate paperwork in order. Zlatan Čelanović, Ex. P00637, PT. 6678 (31 January 2007). Čelanović's immediate superior was Jevtić. Zlatan Čelanović, Ex. P00637, PT. 6626 (31 January 2007); Momir Nikolić, T. 12239 (4 April 2011).

423 Momir Nikolić, T. 12216, 12226–12227, 12236–12237 (4 April 2011); PW-075, Ex. P02066, PT. 3889 (9 November 2006); PW-075, T. 11286 (15 March 2011); Ex. P02473, p. 27.

424 Momir Nikolić, T. 12463, 12477–12478, 12492 (7 April 2011). *See also* Momir Nikolić, T. 12258 (4 April 2011); Ex. P01297, p. 10, para. 13.

425 Momir Nikolić, T. 12243–12244 (4 April 2011).

426 Momir Nikolić, T. 12475–12746 (7 April 2011); Ex. D00202, p. 30. The infantry battalions had assistant commanders for intelligence and security affairs; they would submit reports concerning intelligence and security to Momir Nikolić. Momir Nikolić, T. 12242–12243 (4 April 2011).

427 Momir Nikolić, T. 12236–12237 (4 April 2011), T. 12474–12475 (7 April 2011).

428 Momir Nikolić, T. 12266 (4 April 2011), T. 12559 (11 April 2011); Robert Franken, Ex. P00598, PT. 2437, 2439 (16 October 2006), PT. 2598–2599 (17 October 2006); Joseph Kingori, Ex. P00950, PT. 19164 (12 December 2007), PT. 19167 (13 December 2007); Joseph Kingori, T. 5361 (14 September 2010); Ex. P00992, p. 5; Pieter Boering, T. 8963 (15 December 2010); Evert Rave, Ex. P01004, KT. 835–836 (20 March 2000). On or around 8 July 1995, upon authorisation from the VRS Main Staff, Radoslav Janković of the Intelligence Administration took over Nikolić's liaison duties with UNPROFOR. Momir Nikolić, T. 12464–12465 (7 April 2011).

429 Momir Nikolić, T. 12254 (4 April 2011); PW-075, Ex. P02066, PT. 3797 (8 November 2006).

430 Mile Janjić, Ex. P01094, PT. 17968 (20 November 2007); PW-075, Ex. P02065 (confidential), PT. 3796, 3800 (private session) (8 November 2006). Janković's deputy was Mile Petrović. PW-075, Ex. P02065 (confidential), PT. 3817 (private session) (8 November 2006).

431 Momir Nikolić, T. 12248, 12257–12258 (4 April 2011), T. 12485–12486 (7 April 2011); PW-075, T. 11282–11283, 11288 (private session), 11294 (private session) (15 March 2011); Ex. P01297, p. 10, para. 12; Mile Janjić, T. 8865 (13 December 2010). The engagement of the platoon and issuing orders about its use was within the jurisdiction of Blagojević, while it was Nikolić's duty to ensure that the platoon was always ready to perform police and combat assignments. Momir Nikolić, T. 12249 (4 April 2011).

432 Momir Nikolić, T. 12248 (4 April 2011), T. 12477–12478, 12485–12486, 12492 (7 April 2011); Ex. D00203, p. 11, para. 23; Ex. D00202, p. 31, para. 9; Mile Janjić, Ex. P01094, PT. 17968 (20 November 2007); PW-075, T. 11283, 11286 (private session) (15 March 2011); Ex. P01297, p. 10, para. 13; PW-075, Ex. P02065 (confidential), PT. 3798–3799 (private session) (8 November 2006); PW-075, Ex. P02066, PT. 3889 (9 November 2006).

Platoon, Momir Nikolić had a duty to enact the decision; Blagojević's orders went straight to Janković.[433]

134. In addition to their regular police duties the MP Platoon was tasked with being on duty at the bridge across the Drina River, and manning the checkpoint at Žuti Most ("Yellow Bridge") as well as other checkpoints along the boundaries opposite the Srebrenica enclave.[434] All POWs captured by, and brought to, the Bratunac Brigade were also under the control of the MP Platoon,[435] which would take part in securing facilities used for their temporary detention.[436]

135. The MP members wore the green camouflage uniforms of the Bratunac Brigade and white belts which were visible over their waist belt.[437] The uniforms had emblems on the left arm and ribbons on the left sleeve indicated the name of the Brigade.[438]

2. Rogatica Brigade

136. The Rogatica Brigade[439] was headquartered in Rogatica.[440] Its IKM and one of the Brigade's communications centres were both located in Borike Hotel, which was 18 kilometres away from the Rogatica Brigade Command.[441] About 150 metres east of Borike Hotel, there was a building commonly referred to as the Borike Villa where VRS personnel, including Mladić,[442]

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433 Momir Nikolić, T. 12250–12253 (4 April 2011). While orders from Mladić or Krstić would normally go to the MP Platoon through Blagojević and Nikolić, they could also directly issue orders to the MP Platoon. PW-075, T. 11310–11311 (private session) (15 March 2011). PW-075 stated that Janković also took orders from Popović. PW-075, T. 11275 (private session) (15 March 2011).

434 Momir Nikolić, T. 12254 (4 April 2011); PW-075, Ex. P02066, PT. 3797–3798 (8 November 2006).

435 Momir Nikolić, T. 12254–12255, 12259–12260 (4 April 2011).

436 Momir Nikolić, T. 12261, 12263–12264 (4 April 2011); Ex. P01297, pp. 21–22. Nikolić stated that an order to escort certain Bosnian Muslim prisoners would have been issued by the unit to which the MP belonged, that this order would be carried out by the commander of the MP Platoon, and that the locations where the prisoners would be taken was determined by the Corps command. Momir Nikolić, T. 12263 (4 April 2011).

437 Mile Janjić, T. 8845, 8852–8853 (13 December 2010).

438 Mile Janjić, T. 8845, 8852 (13 December 2010). Momir Nikolić ordered Mile Janjić and other MP members to put the MP insignia on their arms, to take their personal weapons, and to go to the Hotel Fontana in Bratunac. Mile Janjić, Ex. P01096, BT. 9759 (24 May 2004); Mile Janjić, T. 8836 (13 December 2010). Janjić explained that MP units wore this insignia when engaged in police work. Mile Janjić, Ex. P01096, BT. 9759 He said that MP emblems were worn on the upper arm, below the shoulder, indicated that they were part of the Bratunac Brigade, and contained the name of their unit. Mile Janjić, Ex. P01096, BT. 9759 (24 May 2004).

439 Đoko Razdoljac, T. 8232 (30 November 2010) (stating that the 1st Podrinje Light Brigade was normally referred to the Rogatica Brigade); Ex. P02473, p. 23; Ex. P02471, p. 108. Before it was subordinated to the Drina Corps, this brigade was under the command of the Sarajevo-Romanija Corps for the first two years of the conflict. Đoko Razdoljac, T. 8269 (30 November 2010).

440 Zoran Čarkić, T. 12785–12786 (14 April 2011); Ex. P00104, pp. 10, 17; Ex. P00468, p. 3. The code names of the Rogatica Birgade were "Domar" and "Bošut". Ex. P00763.

441 Zoran Čarkić, T. 12721, 12742–12745 (13 April 2011); Ex. P02173; Ex. P02174; Đoko Razdoljac, T. 8242 (30 November 2010); Danko Gojković, Ex. P00496, PT. 10718–10719 (27 April 2007). Čarkić testified that the "Borike IKM" appearing on Ex. P00104 p. 12 was incorrect and it was in fact the command post of the 3rd Battalion of the Brigade, which was situated in the regional elementary school in Sjeversko. Zoran Čarkić, T. 12742–12745 (13 April 2011), T. 12869 (14 April 2011); Ex. P00104, p. 12. *See also* Đoko Razdoljac, T. 8232–8233 (30 November 2010) ("IKM" appearing in Ex. P00491 was the "Forward Command Post" in the schoolhouse in the village of Sjeversko); Ex. P00491.

442 When asked whether the Accused had spent the night at the Villa any time during the Žepa operation, Razdoljac

would stay overnight during the period of the Žepa operation.[443] The Borike Villa, Borike Hotel, and the Sjeversko School where the third battalion of the Brigade had its command post[444] were all connected with a central communications centre in Borike.[445]

137. In 1995 Major or Lieutenant-Colonel Rajko Kušić was the Commander of the Rogatica Brigade.[446] Directly subordinated to him were, among others, Captain Zoran Čarkić, the Chief of the Department for Intelligence and Security Affairs, and Đoko Razdoljac, the Assistant for Logistics.[447] Danko Gojković was a teleprinter operator in the Brigade's communications platoon.[448] The MP battalion of the Brigade secured the Rasadnik Prison in Rogatica.[449]

138. As the Chief of the Department for Intelligence and Security Affairs, Čarkić was tasked with acquiring information on the ABiH, which would be forwarded to his commander, Kušić.[450] In turn, Kušić was to pass the information to the Accused when the latter was in the Rogatica Brigade's zone of responsibility, including Bokšanica Mountain where the UNPROFOR OP2 was located.[451] Along the professional chain of command, Čarkić was subordinated to Popović and Kosorić in the Drina Corps.[452]

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replied: "Possibly. He could have spent a few days there. I'm not sure. [...] I don't know if he could have slept at the Rogatica Command or perhaps a few nights in the trenches at Bokšanica. I don't know whether he went to the Main Staff. I really don't know." Đoko Razdoljac, T. 8244–8245 (30 November 2010).

443 Đoko Razdoljac, T. 8242–8243 (30 November 2010); Ex. P01433. All those who were in Bokšanica went to the Borike Villa when necessary to attend a meeting or to spend the night there. Đoko Razdoljac, T. 8242, 8244 (30 November 2010).

444 Zoran Čarkić, T. 12742–12745 (13 April 2011), T. 12869 (14 April 2011); Ex. P00104, p. 12.

445 Đoko Razdoljac, T. 8246–8247 (30 November 2010). One of the Rogatica Brigade communications centres was also located at the Borike Villa. Zoran Čarkić, T. 12721 (13 April 2011); Đoko Razdoljac, T. 8246 (30 November 2010).

446 Đoko Razdoljac, T. 8228 (30 November 2010) (testifying that Kušić was a "major or perhaps lieutenant-colonel"); Zoran Čarkić, T. 12719 (13 April 2011) (testifying that Kušić was a lieutenant-colonel); Hamdija Torlak, T. 4292, 4294 (23 August 2010) (testifying that Kušić was either a colonel or lieutenant-colonel); Ex. P02176 (Report signed by Beara dated 10 August 1995, indicating that Kušić was a major); Ex. P02471, p. 108. Torlak identified Kušić in a video footage as a lieutenant-colonel. Hamdija Torlak, T. 4438 (25 August 2010); Ex. P00740, 00:43:10.

447 Đoko Razdoljac, T. 8228–8229 (30 November 2010); Zoran Čarkić, T. 12716–12717 (13 April 2011).

448 Danko Gojković, Ex. P00496, PT. 10714 (27 April 2007); Ex. P00468, pp. 3–4. The Brigade's communications platoon was about 50 to 70 metres away from the command. Danko Gojković, Ex. P00496, PT. 10718 (27 April 2007). There was another teleprinter operator called Desimir "Žiža" Žižović. Danko Gojković, T. 2805–2806, 2811, 2820 (16 June 2010), T. 2886, 2901 (17 June 2010); Đoko Razdoljac, T. 8231–8232 (30 November 2010); Ex. P00123; Ex. P00471; Ex. P00489. Gojković testified that the initials "D.ZZ" at the end of Exhibit P00123 might be Žiža's initials. Danko Gojković, T. 2806–2807 (16 June 2010); Ex. P00123 (Tolimir report from the Rogatica Brigade Command, dated 13 July 1995, depicting Žiža" at the top and "D.Ž" at the end). *See, e.g.*, Ex. P00124; Ex. P00128; Ex. P00129; Ex. P00488.

449 Hamdija Torlak, T. 4497–4498 (26 August 2010), T. 4780 (1 September 2010).

450 Zoran Čarkić, T. 12821 (14 April 2011).

451 Zoran Čarkić, T. 12720 (13 April 2011), T. 12811 (14 April 2011). With regard to UNPROFOR OP2 at Bokšanica, see also *infra* para. 604.

452 Zoran Čarkić, T. 12715–12716 (13 April 2011). *See supra* paras. 126–127.

139. The Rogatica Brigade communicated with the Drina Corps, the VRS Main Staff, and the commands of its battalions through radio-relay communications and induction communication.[453] There was also a wire communication on the front lines with the communication centre.[454]

3. Zvornik Brigade

140. The area of responsibility of the Zvornik Brigade covered the most northern part of the Drina Corps's defence, including Snagovo, Zvornik, Karakaj, and Kozluk.[455] In July 1995, the Zvornik Brigade Command was located in the Standard Barracks in Karakaj (code-named "Palma")[456] a few kilometres from Zvornik.[457] The Zvornik Brigade IKM was located in the village of Kitovnice ("Kitovnice IKM"), which was approximately 15 kilometres from the Standard Barracks.[458]

141. In July 1995, tasked to defend a part of the front which was opposite the ABiH 2nd Corps.[459] the Zvornik Brigade had more than 5,000 soldiers[460] and was commanded by Lieutenant Colonel Vinko Pandurević.[461] His Deputy and the Chief of Staff was Major Dragan Obrenović.[462]

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453 Zoran Čarkić, T. 12872 (14 April 2011). *See also* Milomir Savčić, Ex. P02418, PT. 15248–15249 (12 September 2007) (stating that when he was in the sector of Sjeversko, which was in the vicinity of Borike village, he had a telephone connection through a radio equipment called "RIUI"). Wire communications were used only for the shortest route, the induction routes, whereas radio-relay communications were used between the commands of its battalions, the brigade commands, the Borike IKM, and the Drina Corps; and there were only mobile radio sets for correspondence between the battalions and their units. Zoran Čarkić, T. 12875 (14 April 2011).

454 Zoran Čarkić, T. 12872 (14 April 2011).

455 Ex. P00104, p. 6. *See also* Ex. P02287. When established on 2 June 1992, the Zvornik Brigade was the 1st Light Zvornik Infantry Brigade. PW-057, Ex. P02279 (confidential), PT. 16057–16058 (closed session) (9 October 2007); Ljubo Bojanović, Ex. P00008a, BT. 11671 (8 July 2004).

456 Ljubo Bojanović, Ex. P00008a, BT. 11721 (8 July 2004); Ex. P00763; Adjudicated Fact 141.

457 Milorad Birčaković, Ex. P01746, PT. 11011, 11088 (7 May 2007); PW-057, T. 15422 (closed session) (14 June 2011). With regard to the layouts of the command, see Ex. P02313; Ex. P02314. The Zvornik Brigade also had three sets of barracks: one at the Standard Barracks, a casern at Omladinsko Šetalište across from Glinica in Karakaj, and a set of barracks in Kozluk. PW-057, Ex. P02279 (confidential), PT. 16138 (closed session) (10 October 2007). *See also* PW-057, Ex. P02279 (confidential), PT. 15786 (closed session) (25 September 2007).

458 Milorad Birčaković, Ex. P01746, PT. 11013 (7 May 2007); Lazar Ristić, Ex. P01233, PT. 10167 (17 April 2007); Ex. P01234; PW-057, Ex. P02279 (confidential), PT. 15787 (closed session) (25 September 2007); PW-057, T. 15422 (14 June 2011). *See also* Ex. P02396; PW-057, Ex. P02279 (confidential), PT. 16101 (closed session) (9 October 2007).

459 PW-057, Ex. P02279 (confidential), PT. 16088 (closed session) (9 October 2007). The parts of the front held by the Šekovići Brigade and the Vlasenica Brigade also opposed the 2nd Corps lines, as the 2nd Corps was larger than the VRS units. PW-057, Ex. P02279 (confidential), PT. 16088 (closed session) (9 October 2007).

460 PW-057, Ex. P02279 (confidential), PT. 16411–16412 (closed session) (16 October 2007); Ex. P02376; Ex. P01240.

461 Lazar Ristić, T. 9288 (2 February 2011); Mihajlo Galić, Ex. P01106, PT. 10494–10495, 10519 (25 April 2007); Ljubo Bojanović, Ex. P00008a, BT. 11674 (8 July 2004); Ex. P02473, p. 24; Ex. P02471, p. 109. As Commander, Pandurević bore "full" responsibility for the work of the Brigade Command and subordinate commands for the state of morale, security, combat readiness, training, and proper performance. PW-057, Ex. P02279 (confidential), PT. 16796–16797 (closed session) (23 October 2007), PT. 15747, 15749 (closed session) (25 September 2007); Ex. D00148, p. 37, para. 115.

462 Lazar Ristić, T. 9288 (2 February 2011); Milanko Jovičić, Ex. P01701, PT. 11482 (14 May 2007); Mihajlo Galić, Ex. P01106, PT. 10494, 10519 (25 April 2007); Ljubo Bojanović, Ex. P00008a, BT. 11675, 11687 (8 July 2004); PW-057, Ex. P02279 (confidential), PT. 15749–15750 (closed session) (25 September 2007), PT. 15924 (closed session) (27 September 2007); Srećko Aćimović, Ex. P01773, PT. 12939 (20 June 2007); Ex. P02473, p. 24; Ex. P02471, p. 109.

During the first half of July 1995, together with a group of mostly elite units of the Zvornik Brigade, Pandurević was deployed in the field in Srebrenica and Žepa.[463] During Pandurević's absence, Obrenović, as Chief of Staff, was in *de facto* command of the Zvornik Brigade; while he could issue orders "in the spirit of the commander's orders", he could not issue orders independently as that would have caused chaos; he had the right to give tasks to the units in accordance with military rules.[464]

142. The Brigade branches consisted of three Assistant Commanders: then-Captain Sreten Milošević for the Logistics Organ, 2nd Lieutenant Drago Nikolić for the Security Organ ("Zvornik Brigade Security Organ"), and Major Nenad Simić for Morale, Religious, and Legal affairs Organ.[465] As part of the "inner command" and subordinated to Pandurević, these individuals together with Obrenović planned the activities of the Brigade.[466]

143. The Staff,[467] which was headed by Obrenović, made up more than 50% of the Zvornik Brigade Command.[468] Major Miodrag Dragutinović was the Assistant Chief of Staff for Training and Operative Affairs Organ; Major Milan Galić was the Assistant Chief of Personnel Affairs and Mobilisation Organ; Captain Duško Vukotić was the Assistant Chief of the Intelligence and Reconnaissance Organ.[469] These Assistant Chiefs of Staff were ranked above the rest of the staff officers,[470] including Major Dragan Jokić, the Chief of Engineering; Captain First Class Milisav Petrović, the Chief of Communications; and Major or Captain Miodrag Maksimović, the Chief of Artillery.[471]

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463 Ljubo Bojanović, Ex. P00008a, BT. 11687 (8 July 2004).

464 Ljubo Bojanović, Ex. P00008a, BT. 11687 (8 July 2004); PW-057, Ex. P02279 (confidential), PT. 16156–16157 (closed session) (10 October 2007). *See also* PW-057, Ex. P02279 (confidential), PT. 15921 (closed session) (27 September 2007), PT. 16188 (closed session) (10 October 2007); Srećko Aćimović, Ex. P01773, PT. 12939 (20 June 2007), PT. 12994 (21 June 2007).

465 Lazar Ristić, T. 9243 (1 February 2011); PW-060, Ex. 01658 (confidential), PT. 6526 (private session) (30 January 2007); Ljubo Bojanović, Ex. P00008a, BT. 11673–11675 (8 July 2004); Tanacko Tanić, Ex. P01178, PT. 10338 (23 April 2007). *See also* PW-061, Ex. P01672, PT. 7562 (22 February 2007); PW-059, Ex. P01943, PT. 9906 (3 April 2007); PW-057, Ex. P02279 (confidential), PT. 15753, 15760–15761 (closed session) (25 September 2007). The Chief of the Transportation Service was Sergeant Radislav Pantić. PW-061, Ex. P01671 (confidential), PT. 7550 (private session) (22 February 2007); Milenko Tomić, Ex. P01710, PT. 21000 (5 February 2008).

466 Ljubo Bojanović, Ex. P00008a, BT. 11675 (8 July 2004); PW-057, Ex. P02279 (confidential), PT. 16617 (closed session) (19 October 2007).

467 Ex. P02288, p. 37, para. 116; PW-057, Ex. P02279 (confidential), PT. 15746–15747 (closed session) (25 September 2007).

468 PW-057, Ex. P02279 (confidential), PT. 15749–15750 (closed session) (25 September 2007).

469 Ljubo Bojanović, Ex. P00008a, BT. 11676 (8 July 2004); Mihajlo Galić, Ex. P01106, PT. 10493–10494, 10519 (25 April 2007); PW-057, Ex. P02279 (confidential), PT. 15754–15755 (closed session) (25 September 2007), T. 17045 (closed session) (29 October 2007); PW-057, T. 15594 (closed session) (16 June 2011).

470 Ljubo Bojanović, Ex. P00008a, BT. 11675, 11678 (8 July 2004).

471 Ljubo Bojanović, Ex. P00008a, BT. 11678–11679 (8 July 2004); Miloš Mitrović, Ex. P01693, BT. 5595 (3 December 2003); Damjan Lazarević, Ex. P01642, PT. 14433 (29 August 2007); PW-057, Ex. P02279 (confidential), PT. 15750 (closed session) (25 September 2007). PT. 16147 (closed session) (10 October 2007).

144. In 1995 the Zvornik Brigade had the following infantry battalions: the 1st Battalion also known as the Lokanj–Pilica Battalion, commanded by Milan Stanojević;[472] the 2nd Battalion commanded by Reserve Lieutenant Srećko Ačimović;[473] the 3rd Battalion commanded by Branko (Miloš) Studen;[474] the 4th Battalion commanded by Pero Vidaković or Budaković, with Lazar Ristić as his deputy;[475] the 5th Battalion commanded by Vladan (Borisav) Matić;[476] the 6th Battalion commanded by Captain First Class Ostoja Stanišić, with Marko Milošević as his deputy;[477] the 7th Battalion commanded by Drago (Jovo) Beatović;[478] and the 8th Battalion commanded by Captain First Class Radika Petrović, which was also the 4th Battalion of the Bratunac Brigade.[479] There was also the "R" Battalion, or Reserve Battalion, deployed in Planinci-Crni Vrh sector.[480]

145. The Zvornik Brigade also had other units, including a manoeuvre battalion also known as the Podrinje Detachment or the "Drina Wolves" commanded by Major Milan "Legenda" Jolović.[481] Attached to the Staff were the Engineering Company, the MP Company, the Signals Company, the Armour-Machanised Company, and the Light Anti-Aircraft Company.[482]

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472 Jevto Bogdanović, Ex. P01669, PT. 11314 (10 May 2007); PW-057, Ex. P02279 (confidential), PT. 15808 (closed session) (26 September 2007), PT. 16094 (closed session) (9 October 2007); Ex. P02392; Ex. P01240 p. 2; Ex. P01239 p. 1; Ex. P02471, p. 109. The security officer of the 1st Battalion was Slavko Perić, nicknamed Captain Muderiz. Rajko Babic, Ex. P01635, PT.10218–10219 (18 April 2007).

473 Srećko Aćimović, Ex. P01773, PT. 12930–12931, 12933 (20 June 2007), PT. 13035–13036 (21 June 2007); Srećko Aćimović, T. 9595 (8 February 2011); PW-057, Ex. P02279 (confidential), PT. 16097–16099 (closed session) (9 October 2007); Ex. P02394; Ex. P01240, p. 2; Ex. P01239, p. 1; Ex. P02473, p. 26; Ex. P02471, p. 109.

474 Ex. P01240, p. 2; PW-057, Ex. P02279 (confidential), PT. 16100 (closed session) (9 October 2007); Ex. P02395; Ex. P01239, p. 1; Ex. P02473, p. 26; Ex. P02471, p. 109.

475 Lazar Ristić, Ex. P01233, PT. 10035, 10037–10038 (16 April 2007); Lazar Ristić, T. 9238, 9242 (1 February 2011); PW-057, Ex. P02279 (confidential), PT. 16102 (closed session) (9 October 2007); Ex. P02397; Ex. P01240, p. 2.

476 PW-057, Ex. P02279 (confidential), PT. 16096–16097 (closed session) (9 October 2007); Ex. P02393; Ex. P01240, p. 2; Ex. P01239, p. 1; Ex. P02473, p. 26; Ex. P02471, p. 109.

477 Ostoja Stanišić, Ex. P01074, PT. 11594, 11603 (16 May 2007); Marko Milošević, Ex. P01102, PT. 13299 (26 June 2007); PW-057, Ex. P02279 (confidential), PT. 16100 (closed session) (9 October 2007); Ex. P02396; Ex. P01240, p. 2; Ex. P01239, p. 1; Ex. P02473, p. 26; Ex. P02471, p. 109.

478 Ex. P02398; Ex. P02473, p. 26; Ex. P01240, p. 2; Ex. P01239, p. 1.

479 Ex. P02473, p. 26; PW-057, Ex. P02279 (confidential), PT. 16441–16442 (closed session) (16 October 2007) (the corps commander ordered the 8th Battalion to be placed under the Bratunac Brigade as the 4th Battalion), PT. 16502 (closed session) (17 October 2007).

480 Milenko Tomić, Ex. P01710, PT. 20998 (5 February 2008); PW-057, Ex. P02279 (confidential), PT. 16105–16106 (closed session) (9 October 2007) (this unit was mobilised only when there was a special need or an urgent situation in which extra people were needed); Ex. P02399; Ex. P01239 p. 2.

481 Momir Nikolić, T. 12351 (5 April 2011); PW-057, Ex. P02279 (confidential), PT. 15808–15809 (closed session) (26 September 2007), PT. 16130 (closed session) (10 October 2007), PT. 16415 (closed session) (16 October 2007); PW-057, T. 15439–15440 (closed session) (14 June 2011); Ex. P01240, p. 2. *See also* PW-058, Ex. P01656 (confidential), PT. 6437 (private session), 6440 (private session) (29 January 2007). The members wore the red arm bands and arm patches. Erin Gallagher, T. 6666–6667 (21 October 2010); Ex. P00624, p. 12.

482 Ex. P02471, p. 109; PW-057, Ex. P02279 (confidential), PT. 15742 (closed session) (25 September 2007), PT. 16130 (closed session) (10 October 2007).

146. The Zvornik Brigade Security Organ[483] was headed by Drago Nikolić[484] who was directly subordinated to Pandurević.[485] Milorad Trbić was the Assistant to the Chief of Security and Drago Nikolić's deputy.[486] Along the professional chain of command, Drago Nikolić and Milorad Trbić were subordinated to Popović.[487] In his capacity, Drago Nikolić oversaw the MP Company of the Zvornik Brigade.[488] He also had the authority to initiate investigations and sign off on the criminal charges against a soldier drafted by the Crime Prevention Service in the Zvornik Brigade.[489]

147. Lieutenant Miomir Jasikovac was the Commander of the Zvornik Brigade MP Company, and Sergeant Aco Kostić was his deputy.[490] Jasikovac was subordinate to Drago Nikolić and he would receive orders either from Pandurević or Drago Nikolić.[491] Stationed at the Standard Barracks at Karakaj,[492] the MP was responsible for escorting and guarding facilities, check-points, POWs, or VRS soldiers who were being held in detention for crimes investigated.[493] The MP members had a uniform with a shoulder insignia identifying them as MP and a white belt.[494]

148. Headquartered in Karakaj,[495] the Engineering Company was divided into platoons: the Pioneer Platoon, the Roads and Bridges Platoon also known as the Fortification Platoon or the Putni

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483. Ex. P02288 (confidential), p. 38, para. 122; PW-057, Ex. P02279 (confidential), PT. 17126–17127 (closed session) (30 October 2007). *See also* PW-057, Ex. P02279 (confidential), PT. 15752–15753 (closed session) (25 September 2007); Ljubo Bojanović, Ex. P00008a, BT. 11682–11683 (8 July 2004).

484 On the battalion level, the security and intelligence organs were combined. PW-057, Ex. P02279 (confidential), PT. 15755 (closed session) (25 September 2007).

485 Ex. D00203, p. 10, para. 16; Ex. D00202, p. 7, para. 6; PW-057, Ex. P02279 (confidential), PT. 15758 (closed session) (25 September 2007). *See also* PW-057, Ex. P02279 (confidential), PT. 15767 (closed session) (25 September 2007); Ex. P02379. In line with the Rules of Services of the Security Organ, Drago Nikolić would make proposals to Pandurević regarding the use of the MP and was responsible for their combat readiness. PW-057, Ex. P02279 (confidential), PT. 15759–15760 (closed session) (25 September 2007), PT. 16705–16706 (closed session) (22 October 2007); PW-057, T. 15592–15594 (closed session) (16 June 2011); Ex. D00203, p. 11, para. 23.

486 Lazar Ristić, T. 9243–9244 (1 February 2011). *See also* PW-059, Ex. P01943, PT. 9906 (3 April 2007).

487 PW-057, Ex. P02279 (confidential), PT. 15768, 15770 (closed session) (25 September 2007).

488 PW-057, Ex. P02279 (confidential), PT. 15753, 15759 (closed session) (25 September 2007). *See also* Ex. P02379. He would also give orders to the MP. Mihajlo Galić, T. 16028–16029, 16047, 16054 (4 July 2011). Nebojša Jeremić, Ex. P01280, PT. 10422–10423 (24 April 2007).

489 Nebojša Jeremić, Ex. P01280, PT. 10421 (24 April 2007).

490 PW-060, Ex. P01658 (confidential), PT. 6526 (private session), 6595–6596 (private session) (30 January 2007); PW-059, Ex. P01943, PT. 9905 (3 April 2007); Nebojša Jeremić, Ex. P01280, PT. 10447–10448 (24 April 2007); PW-057, Ex. P02279 (confidential), PT. 15759 (closed session) (25 September 2007); PW-057, T. 15491 (closed session) (15 June 2011); Ex. P01240, p. 2; Ex. P02473, p. 25; Ex. P02471, p. 109.

491 PW-058, Ex. P01656 (confidential), PT. 6440–6441 (private session) (29 January 2007); PW-057, Ex. P02279 (confidential), PT. 16239–16240 (closed session) (11 October 2007), PT. 16705–16706 (closed session) (22 October 2007); PW-057, T. 15595 (closed session) (16 June 2011). *See also* Ex. P02379.

492 PW-060, Ex. 01658 (confidential), PT. 6526 (private session) (30 January 2007); Milorad Birčaković, Ex. P01746, PT. 11011 (7 May 2007).

493 Nebojša Jeremić, T. 6931 (28 October 2010); PW-060, Ex. P01658 (confidential), PT. 6526 (private session) (30 January 2007), PT. 6440 (private session) (29 January 2007).

494 PW-058, Ex. P01656 (confidential), PT. 6438–6439 (private session) (29 January 2007). *See also* Damjan Lazarević, Ex. P01642, PT. 14442 (29 August 2007).

495 Miloš Mitrović, Ex. P01693, BT. 5593–5594 (3 December 2003); Ostoja Stanojević, Ex. P01697, BT. 5676 (4 December 2003). *See also* Damjan Lazarević, Ex. P01642, PT. 14432–14433 (29 August 2007).

platoon,[496] and the Platoon for Engineering Works.[497] The duties of the Engineering Company included putting up blockades, building fortifications, and all jobs requiring the use of construction machinery.[498] Major Dragan Jevtić was the Commander of the company, and his deputy was Slavko Bogičević.[499] Jevtić would receive orders by phone or in person from the Chief of Engineers, Jokić, who received tasks from the Zvornik Brigade Command.[500]

D. MUP Forces

149. During the period relevant to the Indictment, various RS police units were operating under the control of the VRS.[501] Headed by Tomislav Kovač, the Deputy Minister of Interior,[502] these units were categorised into two specific types: the units of Municipal Police (Special Police Forces, "PJP") and the Special Police detachments of the Special Police Brigade ("SBP")[503]

1. Re-Subordination of MUP Units to VRS

150. In accordance with Article 13 of the "Law on Ministries during an Imminent Threat of War or a State of War" ("Law on Ministries"),[504] police units were to participate in combat operations pursuant to orders issued by the Commander-in-Chief of the Armed Forces, Karadžić, and the Minister of the Interior, the latter of whom "shall give orders to police units through the Ministry Police Forces Command Staff".[505] Article 14 of the Law on Ministries further provided, *inter alia,* that the Commander-in-Chief of the Armed Forces assigned police units to combat operations and that the units operated under the MUP commander in whose zone of responsibility they were

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496 In July 1995, the Roads and Bridges Platoon had a few lorries, a 75 bulldozer, and a Skip also called as "Rovokopac", which was a small construction machine like a tractor. Damjan Lazarević, Ex. P01642, PT. 14437–14438 (29 August 2007). As the Roads and Bridges Platoon did not have any larger machinery, when the Zvornik Brigade needed larger equipment, the Platoon would requisition such machinery from various construction companies. Damjan Lazarević, Ex. P01642, PT. 14438 (29 August 2007). In July 1995, the Skip was being mobilised and used by the Engineering Company often because it was necessary for repairing roads and digging canals; it was stored in a warehouse at the compound at Karakaj. Miloš Mitrović, Ex. P01693, BT. 5596 (3 December 2003).

497 Damjan Lazarević, Ex. P01642, PT. 14436 (29 August 2007) (stating that in July 1995, Sergeant 2nd Class Damjan Lazarević was the Commander of the Roads and Bridges Platoon consisting of ten to 12 men); Miloš Mitrović, Ex. P01693, BT. 5594 (3 December 2003); Cvijetin Ristanović, Ex. P01689, BT. 5363 (1 December 2003); Ljubo Bojanović, Ex. P00008a, BT. 11679 (8 July 2004).

498 Ljubo Bojanović, Ex. P00008a, BT. 11679–11680 (8 July 2004); Cvijetin Ristanović, Ex. P01689, BT. 5360 (1 December 2003).

499 Cvijetin Ristanović, Ex. P01689, BT. 5363, 5365 (1 December 2003); Miloš Mitrović, Ex. P01693, BT. 5595, 5601 (3 December 2003); Ostoja Stanojević, Ex. P01697, BT. 5675–5676 (4 December 2003); Damjan Lazarević, Ex. P01642, PT. 14433–14434 (29 August 2007); Ex. P01240, p. 2.

500 Damjan Lazarević, Ex. P01642, PT. 14434–14435, 14437 (29 August 2007). *See also* Ostoja Stanojević, Ex. P01697, BT. 5676–5677 (4 December 2003); PW-057, Ex. P02279 (confidential), PT. 16161 (closed session) (10 October 2007).

501 Ex. P02473, p. 30.

502 *See, e.g.,* Ex. P01615; Ex. P02516; Ex. P02605; Mendeljev Đurić, Ex. P01620, PT. 10797 (1 May 2007).

503 Ex. P02473, p. 30. *See also* Ex. P01609; PW-052, Ex. P01598, PT. 8663 (12 March 2007).

504 It was issued by Karadžić and published in the RS Official Gazette on 29 November 1994. Ex. P01249, p. 12.

505 Ex. P01249, p. 12; Ex. P02419, p. 1; Milomir Savčić, T. 15887 (22 June 2011). *See also* Ex. P01609; PW-052, Ex. P01598, PT. 8665–8666 (12 March 2007).

performing their tasks while they were re-subordinated to the VRS.[506] Consistent with that law the police could only be used for combat operations that were "established in advance by the commander-in-chief or the Minister of the Interior."[507] Upon an order by Karadžić on 22 April 1995 the VRS defined "more precisely and concretely" the engagement and employment of RS MUP units in combat activities as part of the VRS troops.[508]

2. SBP

151. The SBP was originally a detachment for special assignments or missions[509] dealing with internal security operations such as "preventing disturbances of peace" and "dealing with hostage situations".[510] During the war the SBP functioned as a combat brigade.[511]

152. By July 1995 the SBP consisted of nine detachments which were deployed throughout the RS.[512] The headquarters of the SBP was in Janja.[513] In July, Colonel or Major General Goran Šarić[514] was the SBP Commander and Colonel Ljubomir Borovčanin was his deputy.[515] Sarić

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506 Ex. P01249, p. 12; Ex. P02419, p. 2; Richard Butler, T. 16585–16589, 16590–16593 (13 July 2011); Milomir Savčić, Ex. P02418, PT. 15288 (12 September 2007). *See also* Adjudicated Facts 144, 145. Savčić testified that the Drina Corps Command communication concerning the engagement of the 65th Protection Regiment and MUP forces of 20 May 1995 was an example of the manner in which MUP units would be subordinated to a unit, a corps or other formations in the VRS. Ex. P02431; Milomir Savčić, T. 15783–15785 (21 June 2011). In this regard, the Chamber notes the testimony of Petar Škrbić who stated that there had been no re-subordination of the civilian police during the time relevant to this case as the civilian police were only subordinated to the VRS during a state of war, and it was in October 1995 when the state of war was declared for the entire RS. Petar Škrbić, T. 18528 (30 January 2012), T. 18625, 18627, 18636 (31 January 2012). Individual declarations of state of war had been made in the area of responsibility of the Sarajevo-Romanija Corps in early 1995, then in the area of the 2nd Krajina Corps, and in the Srebrenica-Skelani municipality on 14 July 1995. Ex. P02869; Petar Škrbić, T. 18528 (30 January 2012), T. 18627 (31 January 2012), T. 18781–18782 (2 February 2012). On cross-examination, however, Škrbić acknowledged that the VRS had requested the proclamation of the state of war since the start of the war in 1992. Petar Škrbić, T. 18782 (2 February 2012). In fact, there is evidence that during the combat operations against Srebrenica in July 1995, MUP combat units, consisting of the 2nd Šekovići Detachment, the 1st Company of the PJP of the Zvornik SJB, and the Jahorina Recruits were re-subordinated to the VRS. Ex. P01335, pp. 1–3 (Borovčanin's report dated 5 September 1995, indicating that the MUP units commanded by Borovčanin received orders from Mladić); Ex. P02516 (Kovač's order dated 10 July 1995, indicating that pursuant to an order of Karadžić, he instructs the MUP unit commander, Borovčanin, to "make contact with the Corps Chief of Staff, General Krstić" upon arrival at the Srebrenica sector on 11 July 1995); Ex. P01615. *See also* Petar Škrbić, T. 18768–18770 (2 February 2012). *See also* Milomir Savčić, Ex. P02418, PT. 15287 (12 September 2007) (stating that there were a number of occasions when the units of the SBP were re-subordinated to a higher command of the VRS). Together with the law mentioned above, the Chamber is satisfied that the MUP forces were re-subordinated to the VRS during the time relevant to the Indictment.

507 Ex. P01249, p. 12; Richard Butler, T. 16592–16593 (13 July 2011).

508 Ex. P02419, p. 1.

509 Mendeljev Đurić, Ex. P01620, PT. 10794 (1 May 2007). *See also* Mendeljev Đurić, Ex. P01620, PT. 10851 (2 May 2007).

510 Mendeljev Đurić, Ex. P01620, PT. 10791 (1 May 2007).

511 PW-052, Ex. P01598, PT. 8571 (9 March 2007).

512 PW-052, Ex. P01598, PT. 8570 (9 March 2007). *See also* Mendeljev Đurić, Ex. P01620, PT. 10797–10798 (1 May 2007), PT. 10906–10907 (3 May 2007); Milenko Pepić, Ex. P01628, T. 13538–13539 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13459 (28 June 2007); Dobrisav Stanojević, Ex. P01264, PT. 12880 (19 June 2007).

513 PW-052, Ex. P01598, PT. 8570–8571 (9 March 2007) (Janja is a village 12 kilometres from Bijeljina).

514 According to Đurić, rank did not exist within the police forces and there were only functional distinctions; when the rank system was introduced, Šarić was first Colonel and then was promoted to Major General and Borovčanin

reported to the Minister of Interior or Deputy Minister of Interior.[516] Duško "Staljin" Jević was the Assistant Commander for Operations and Training,[517] whose duties included training a unit of deserters in the "Jahorina Training Centre".[518] During the war, there were a number of occasions when units of the SBP were re-subordinated to a higher command of the VRS.[519]

3. 2nd Šekovići Detachment

153. As one of the nine detachments, the 2nd Šekovići Detachment was commanded by Miloš Stupar until mid-June 1995 when he was replaced by Rade "Oficir" Čuturić.[520] His immediate superiors were Sarić and Borovčanin.[521] This unit was headquartered in the Lovnica Hotel in Šekovići.[522]

154. During the war the 2nd Detachment, which was composed of three platoons,[523] was mostly engaged in combat assignments.[524] In July 1995 the members wore overall camouflage uniforms—green and brown—and some wore two-piece uniforms.[525] They had an insignia on their left shoulder on the left sleeve featuring the words "Special Brigade", "the police", a number, and in the middle, a flag with the coat of arms featuring a two-headed eagle.[526]

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was a Colonel. Mendeljev Đurić, Ex. P01620, PT. 10904–10906 (3 May 2007).

515 Mendeljev Đurić, Ex. P01620, PT. 10797 (1 May 2007), PT. 10837–10838, 10850–10851 (2 May 2007), PT. 10904–10905 (3 May 2007); Ex. P01623; Ex. P01622, p. 10; Ex. P01621; Ex. P00991, 02:27:53–02:27:55; Milenko Pepić, Ex. P01628, PT. 13539–13540 (9 July 2007). *See also* Erin Gallagher, T. 6682, 6715 (21 October 2010), Ex. P00624, pp. 46, 77. Đurić stated that in July 1995 Borovčanin could not have had the rank of lieutenant-colonel because that rank did not exist within the police forces at all. Mendeljev Đurić, Ex. P01620, PT. 10851 (2 May 2007).

516 PW-052, Ex. P01598, PT. 8572 (9 March 2007).

517 PW-052, Ex. P01597 (confidential), PT. 8567 (private session), 8569 (private session) (9 March 2007), PT. 8647 (private session) (12 March 2007). *See also* Ex. P01335, p. 2; Erin Gallagher, T. 6683 (21 October 2010), Ex. P00624, p. 47.

518 PW-052, Ex. P01597 (confidential), PT. 8567–8568 (private session) (9 March 2007). The insignia denoted only the functional distinctions between MUP members. Mendeljev Đurić, Ex. P01620, PT. 10848–10852 (2 May 2007), PT. 10902–10905 (3 May 2007); Ex. P01622, p. 10.

519 Milomir Savčić, Ex. P02418, PT. 15286–15287 (12 September 2007). *See, e.g.,* Ex. P02516 (Order by Tomislav Kovač to the MUP units dated 10 July 1995, directing that: "On arrival at his destination the unit commander is obliged to make contact with the Corps Chief of Staff, General Krstić"); Ex. P01615 (same as Ex. P02516).

520 Milenko Pepić, Ex. P01628, PT. 13538–13539 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13458–13459 (28 June 2007).

521 Milenko Pepić, Ex. P01628, PT. 13539 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13459, 13463 (28 June 2007).

522 Milenko Pepić, Ex. P01628, PT. 13538 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13458 (28 June 2007).

523 Milenko Pepić, Ex. P01628, PT. 13540, 13544 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13459–13460 (28 June 2007). Marko Aleksić led the 1st Platoon; Jelenko Lukić led the 2nd Platoon, which later came under the command of Čuturić; the 3rd Platoon, known as the "Skelani Platoon", was led by Milenko "Cop" Trifunović. Milenko Pepić, Ex. P01628, PT. 13540–13541 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13460, 13489–13490 (28 June 2007). Čelić estimated that there were between 20 to 25 men in the Skelani Platoon. Predrag Čelić, Ex. P01633, PT. 13493–13494 (28 June 2007).

524 Milenko Pepić, Ex. P01628, PT. 13543 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13462 (28 June 2007).

525 Milenko Pepić, Ex. P01628, PT. 13541 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13462 (28 June 2007). The two-piece uniforms were also camouflaged and olive-drab. Predrag Čelić, Ex. P01633, PT. 13501 (28 June 2007). The Detachment uniform did not have white belts. Predrag Čelić, Ex. P01633, PT. 13501 (28 June 2007).

526 Predrag Čelić, Ex. P01633, PT. 13462 (28 June 2007); Milenko Pepić, Ex. P01628, T. 13541–13542

4. Jahorina Recruits

155. The SBP had a training centre in Mount Jahorina called the Jahorina Training Centre.[527] Founded by the RS MUP,[528] it hosted groups of military conscripts, some of them with combat experience, as well as groups of deserters ("Jahorina Recruits").[529] They were deployed to the SBP throughout the RS territory,[530] but they were not professional members of the SBP.[531] Their uniforms were different from those worn by the SBP members.[532] Since they were not professional policemen, they neither had an official identification of the MUP nor were they paid by the MUP.[533]

156. Duško Jević was the director of the Jahorina Training Centre[534] and reported to Tomislav Kovać, the Deputy Minister of the Interior.[535] Major Mendeljev "Mane" Đurić[536] was assigned by the Command of the SBP of Bijeljina to serve as the Commander of the 1st Company of the Jahorina Training Centre.[537]

5. CJB

157. Companies of the PJP were made up of primarily municipal police officers from a police region and were formed under the MUP.[538] In July 1995, under the command of the Zvornik Public Security Centre ("CJB"), headed by Lieutenant-Colonel or Colonel Dragomir Vasić,[539] there were

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(9 July 2007). The Detachment had a bus, two lorries, one or two passenger vehicles, one or two T-55 tanks, a Praga, and an armoured vehicle known as a BOV. Milenko Pepić, Ex. P01628, PT. 13542 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13461 (28 June 2007).

527 PW-052, Ex. P01598, PT. 8570 (9 March 2007), PT. 8648–8649 (12 March 2007); Mendeljev Đurić, Ex. P01620, PT. 10792–10794 (1 May 2007), PT. 10843–10844 (2 May 2007).

528 Mendeljev Đurić, Ex. P01620, PT. 10843 (2 May 2007).

529 PW-052, Ex. P01598, PT. 8571 (9 March 2007).

530 PW-052, Ex. P01598, PT. 8649–8650 (12 March 2007).

531 Mendeljev Đurić, Ex. P01620, PT. 10845–10846 (2 May 2007) (testifying that therefore they did not have any such insignia); PW-052, Ex. P01598, PT. 8650 (explaining that to be a professional policeman, recruits must graduate from a course or academy; however, the Jahorina Recruits had only attended the military part of the training, therefore, they were not professional policemen).

532 Mendeljev Đurić, Ex. P01620, PT. 10847 (2 May 2007).

533 PW-052, Ex. P01598, PT. 8650–8651 (12 March 2007). *See also* Mendeljev Đurić, Ex. P01620, PT. 10845 (2 May 2007). PW-052 stated that he did not know who paid the Jahorina Recruits, but said that "only the Ministry of the Interior could have paid them." PW-052, Ex. P01598, PT. 8651 (12 March 2007).

534 Mendeljev Đurić, Ex. P01620, PT. 10793–10794 (1 May 2007).

535 Mendeljev Đurić, Ex. P01620, PT. 10797 (1 May 2007).

536 Mendeljev Đurić, Ex. P01620, PT. 10797 (1 May 2007); PW-052, Ex. P01597 (confidential), PT. 8568 (private session) (9 March 2007). *See infra* para. 262. Mendeljev "Mane" Đurić is different from Dragomir Vasić's deputy of the Zvornik CJB, Mane Djurić. *See* Richard Butler, T. 16668, 16680 (14 July 2011).

537 Mendeljev Đurić, Ex. P01620, PT. 10792–10793, 10796 (1 May 2007), PT. 10838 (2 May 2007), PT. 10904–10905 (3 May 2007). *See also* Ex. P01335, p. 2.

538 Richard Butler, T. 16587–16588 (13 July 2011); PW-054, Ex. P02054, PT. 4081–4084 (16 November 2006).

539 PW-057, Ex. P02279 (confidential), PT. 15870 (closed session) (26 September 2007), PT. 16515 (closed session) (17 October 2007); PW-057, T. 15429–15430 (closed session) (14 June 2011); PW-063, Ex. P00866 (confidential), PT. 9203 (private session) (22 March 2007); PW-063, T. 6491–6492 (19 October 2010); Momir Nikolić, T. 12418–12419 (6 April 2011); Ex. P01259a; Ex. P02057; Ex. P02531, Ex. P02524 (all the documents signed by Dragomir Vasić himself).

six PJP companies forming a PJP battalion.[540] The primary functions of the PJPs were related to law enforcement and public safety.[541] Organised under the MUP and supervised through the CJBs, PJPs would "keep the terrain that was captured",[542] effectively guarding the lines.[543] The PJPs were subordinate to the VRS and occasionally engaged in combat activities when required.[544]

158. Commanded by Radomir "Rašo" Pantić,[545] the 1st PJP Company consisted of about 60 mostly young police officers from the police stations in Zvornik, Milići, Vlasenica, Šekovići, Bratunac, and Skelani.[546] This company often went to the field, together with and under the command of the SBP units.[547] In the field, the members of the 1st PJP Company wore a green, camouflage pattern uniform with insignia indicating that they were part of the 1st Company of the Zvornik CJB.[548] During normal activities as civilian policemen, they wore a blue camouflage uniform.[549]

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540 Dobrisav Stanojević, Ex. P01264, PT. 12903–12904 (19 June 2007). All police officers from the municipal police stations subordinated to the Zvornik CJB were members of one of the six PJP companies. Dobrisav Stanojević, T. 7962 (23 November 2010).

541 PW-052, Ex. P01598, PT. 8571–8572 (9 March 2007).

542 PW-054, Ex. P02054, PT. 4083 (16 November 2006).

543 PW-054, Ex. P02053 (confidential), PT. 4089 (private session) (17 November 2006).

544 Dobrisav Stanojević, Ex. P01264, PT. 12873 (19 June 2007). *See also* PW-054, Ex. P02053, PT. 4089–4090 (17 November 2006); Richard Butler, T. 16475 (12 July 2011).

545 Dobrisav Stanojević, Ex. P01264, PT. 12867 (19 June 2007).

546 Dobrisav Stanojević, Ex. P01264, PT. 12867, 12903–12904 (19 June 2007). The PJP was subdivided into three platoons. Dobrisav Stanojević, Ex. P01264, PT. 12867, 12904 (19 June 2007). Dobrisav Stanojević belonged to the Third Platoon under Platoon Commander Dušan Micić. Dobrisav Stanojević, Ex. P01264, PT. 12867 (19 June 2007); Dobrisav Stanojević, T. 7962–7963 (23 November 2010).

547 Dobrisav Stanojević, Ex. P01264, PT. 12904 (19 June 2007). The members of the 1st PJP Company were issued weapons, bullet-proof vests, uniforms, and sets of ammunitions for their weapons and some members also carried hand grenades. Dobrisav Stanojević, Ex. P01264, PT. 12869 (19 June 2007).

548 Dobrisav Stanojević, Ex. P01264, PT. 12868–12869 (19 June 2007); Dobrisav Stanojević, T. 7962 (23 November 2010).

549 Dobrisav Stanojević, T. 7962 (23 November 2010).

IV. THE EVENTS LEADING UP TO THE ATTACKS ON SREBRENICA AND ŽEPA

A. 1991–1994

1. Outbreak of War

(a) 1991–1992: Break-Up of the Former Yugoslavia

159. From 1945 to 1990, the six Republics of the Socialist Federal Republic of Yugoslavia[550] enjoyed a period of relatively peaceful inter-ethnic relations.[551] By 1991, Bosnia and Herzegovina ("BiH") was the most multi-ethnic of all of the Republics with a population that was approximately 44% Muslim, 31% Serb, and 17% Croat.[552] When the Republic of Bosnia and Herzegovina declared sovereignty on 15 October 1991,[553] a rise in nationalism and struggle for territorial control erupted among these three major ethnic groups of BiH.[554]

(b) 1992–1993: Conflict in Srebrenica

160. Located in the Drina River valley of BiH, Srebrenica lies approximately 15 kilometres from the Serbian border.[555] In 1991, the population of the Srebrenica municipality was 37,000, of which 73% were Muslim and 25% were Serb with the remaining 2% made up of other ethnicities.[556] Bosnian Muslim witnesses described their lives before the war as content.[557] Many in the region were prosperous farmers and business owners and the municipality was regarded as one of the wealthiest in north-east Bosnia with several factories and mines.[558]

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550 Adjudicated Fact 1 (the six independent republics were Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia). For greater detail on the break-up of the Socialist Federal Republic of Yugoslavia, *see Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997, paras. 53–126.

551 Adjudicated Fact 3. *See, e.g.,* Manojlo Milovanović, T. 14280 (18 May 2011); Hana Mehmedović, Ex. P01533 (17 June 2000), p. 7.

552 Ex. D00122, p. 9; Adjudicated Fact 2. *See also* Manojlo Milovanović, T. 14281 (18 May 2011) (testifying that the differing ethnicities were largely "grouped"—Muslims were the majority in Central Bosnia around Sarajevo and Zenica and in the area between Doboj and Sarajevo, Croats primarily lived on the outskirts of Central Bosnia (in the Lasva valley, on Mount Vlasić, and in Travnik and Bugojno), Serbs were largely living in Krajina, Eastern Bosnia, and Eastern Herzegovina).

553 Adjudicated Facts 7, 8. BiH's independence was recognised by the European Community on 6 April 1992 and by the United States the following day. Ex. D00122, p. 9; Adjudicated Fact 8. Both Slovenia and Croatia declared independence in June 1991. Adjudicated Fact 5. Macedonia declared independence in September 1991. Adjudicated Fact 6.

554 Adjudicated Fact 8.

555 Ex. D00122, p. 13; Adjudicated Fact 9. Srebrenica town is one kilometre wide and two kilometres long. Adjudicated Fact 10.

556 Ex. D00122, p. 13; Adjudicated Fact 12.

557 Rahima Malkić, Ex. P01521 (17 June 2000), p. 3; Mirsada Gabeljić, Ex. P01529 (18 June 2000), p. 3; Salih Mehmedović, Ex. P01531 (15 June 2000), p. 3; Hana Mehmedović. Ex. P01533 (17 June 2000), pp. 2, 6.

558 *See, e.g.,* Rahima Malkić, Ex. P01521 (17 June 2000), pp. 3–4; Mejra Mešanović, Ex. P01525 (19 June 2000), pp. 3–4; Mirsada Gabeljić, Ex. P01529 (18 June 2000), p. 3; Salih Mehmedović, Ex. P01531 (15 June 2000),

161. When conflict broke out in BiH, the Central Podrinje region—which includes Srebrenica—became of strategic importance.[559] For several weeks early in 1992, Serb paramilitaries took control of Srebrenica town;[560] but by May 1992, Naser Orić, the Commander of the 28th Division of the 2nd Corps of the ABiH in Srebrenica,[561] had led a group of Bosnian Muslim fighters to recapture it.[562] In April–June 1992, Bosnian Serbs attacked villages in Eastern BiH[563] and people were killed and taken away.[564] In this time period, many Bosnian Muslims fled their homes.[565]

(c) May 1992: Six Strategic Objectives

162. On 12 May 1992, Karadžić, Mladić, Milovanović, and the Accused attended the 16th Session of the National Assembly of the Serbian People in BiH chaired by Momčilo Krajišnik, the president of the assembly.[566] There, the Assembly discussed the "Decision on Strategic Objectives of the Serbian People",[567] which outlined "Six Strategic Objectives", including, *inter alia*:

> 1. Establish State borders separating the Serbian people from the other two ethnic communities[568] [...]
>
> 3. Establish a corridor in the Drina river valley, that is, eliminate the Drina as a border separating Serbian States[569] [...]
>
> 5. Divide the city of Sarajevo into Serbian and Muslim parts and establish effective State authorities in both parts[570] [...]

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pp. 3–4; Hana Mehmedović, Ex. P01533 (17 June 2000), p. 6. *See also* Adjudicated Fact 11.

559 This was a strategic area for the Bosnian Serbs, since it connected the two main areas of the RS—the Krajina and the more southern parts of Herzegovina—where ethnic Bosnian Serbs resided. Richard Butler, T. 16306 (8 July 2011); Adjudicated Fact 13.

560 Adjudicated Fact 14.

561 Richard Butler, T. 16549 (13 July 2011). *See also* Ex. D00005; Mevludin Orić, T. 848 (25 March 2010).

562 Adjudicated Fact 15. Naser Orić and his men continued with a series of raids over the next several months. *Ibid.*

563 Mirsada Malagić, T. 10009, 10015–10016 (16 February 2011); Osman Salkić, Ex. P01373 (4 December 2004), p. 2. By the end of May 1992, Srebrenica was mostly abandoned, burned, and looted. Mirsada Malagić, T. 10010 (16 February 2011). The VRS continued the take-over in Krivače, Rijeka, Podžeplje, Brložnik, Stoborani, Gođenje, and a number of villages in the municipality of Rogatica such as Laže and Vrtoče. Hamdija Torlak, T. 4251–4252 (23 August 2010).

564 Mirsada Malagić, T. 10015–10016 (16 February 2011); PW-013, T. 9833 (14 February 2011).

565 Hamdija Torlak, T. 4251, 4264 (23 August 2010); Mirsada Malagić, T. 10009–10010, 10015–10016 (16 February 2011); PW-073, T. 615 (12 March 2010).

566 Ex. P02477; Manojlo Milovanović, T. 14276–14277 (18 May 2011) (stating that it was the first meeting involving the RS political leadership and the representatives of VRS Main Staff).

567 Ex. P00022; Ex. P02477, pp. 13–14; Richard Butler, T. 16301–16302 (7 July 2011); Ex. P02475, pp. 9–10; Manojlo Milovanović, T. 14276–14277 (18 May 2011); Adjudicated Fact 16.

568 Ex. P00022; Richard Butler, T. 16305 (8 July 2011). *See also* Ex. P02477, p. 13; Ex. P02752. Milovanović testified that this objective was established on 9 January 1992, when there was a decision made to establish the RS and that this decision was to apply to the former "autonomous Serb regions" of Krajina, Posavina and Semberija, as well as the Sarajevo-Romanija plateau and Herzegovina, which were of a predominantly Bosnian Serb population. Manojlo Milovanović, T. 14279–14281 (18 May 2011).

569 Ex. P00022; Richard Butler, T. 16304–16306 (8 July 2011). *See also* Ex. P02477, p. 13; Adjudicated Fact 16. *See also* Ex. P02880, p. 160. This area, generally referred to as the "lower Drina valley" or "lower Podrinje" encompassed the west bank of the Drina River covering the area from Srebrenica to Zvornik. Richard Butler, T. 16304 (8 July 2011), T. 16456–16457 (11 July 2011).

570 Ex. P00022. *See also* Ex. P02477, p. 14.

The Assembly also unanimously adopted the decision on establishing the Army of the Serbian Republic of Bosnian and Herzegovina.[571] On 12 August 1992, at the 19th Session of the National Assembly, the Serbian Republic of BiH changed its name to Republika Srpska[572] and the army became known as the VRS.[573]

163. On 2 September 1992, Mladić convened a meeting in Bijeljina which was attended by both political and military figures, including Karadžić, Krajišnik, and General Milan Gvero, the Assistant Commander and the Chief of the Sector for Morale, Religious, and Legal Affairs.[574] Krajišnik presented the Six Strategic Objectives at this meeting.[575] These objectives were ultimately published in the Official Gazette of the Serbian People in BiH on 26 November 1993.[576]

(d) 19 November 1992: Operational Directive 4

164. To realise the objectives of the RS leadership, nine "Strategic Directives" were issued at various points of the armed conflict.[577] On 19 November 1992, Mladić issued the Operational Directive 4 ("Directive 4") to all corps, which had been drafted by Milovanović.[578] Directive 4 ordered the Drina Corps to:

> [...] defend Višegrad (the dam), Zvornik and the corridor, while the rest of its forces in the wider Podrinje region shall exhaust the enemy, inflict the heaviest possible losses on him and force him to leave the Birač, Žepa and Goražde areas together with the Muslim population. First offer the able-bodied and armed men to surrender, and if they refuse, destroy them.[579]

165. On 24 November 1992, in attempt to implement the broader orders of Directive 4, the Drina Corps Commander Milenko Živanović issued a decision for further operations to the Command of

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571 Ex. P02477, pp. 2, 57–58; Ex. P02475, p. 9. The VRS Main Staff's Analysis of Combat Readiness for 1992 states: "The strategic objectives of our war which were promptly defined and set before the Main Staff of the Army of RS, the Commands and units, served as a general guideline upon which we planned the actual operations and concerted battles." Ex. P02880, p. 159. *See supra* para. 97.

572 The decision to form the Republika Srpska occurred as early as 9 January 1992; it would combine the regions with predominantly Serb populations, including the self-declared autonomous Serb regions of Krajina, Posavina, and Semberija, the Sarajevo-Romanija plateau, and Herzegovina. Manojlo Milovanović, T. 14279 (18 May 2011).

573 Ex. D00261, p. 1.

574 Ex. P02752; Novica Simić, Ex. P02756, PT. 28649–28654 (21 November 2008).

575 Ex. P02752; Novica Simić, Ex. P02756, PT. 28651–28654 (21 November 2008).

576 Ex. P00022; Richard Butler, T. 16301–16302 (7 July 2011), T. 16878–16879 (20 July 2011). The Accused argues that the Assembly took no decision on these goals and they were published in the Official Gazette "by mistake". Accused Final Brief, paras. 366, 374. The Chamber finds that while there may have been no formal adoption of the Strategic Objectives on 12 May 1992, they do indicate the goals of the RS leadership; the minutes do not reflect any objection to these objectives. More importantly, these goals were used to formulate later Directives of the VRS. *See* Richard Butler, T. 16886–16890 (20 July 2011). *See also infra* paras. 186–192.

577 Richard Butler, T. 16455 (11 July 2011), T. 16892, 16923–16924 (20 July 2011).

578 Ex. P02495; Richard Butler, T. 16454–16455 (11 July 2011).

579 Ex. P02495, p. 5; Richard Butler, T. 16456–16458 (11 July 2011); Adjudicated Fact 18.

the Zvornik Brigade; referencing Directive 4, he ordered an attack to "force the Muslim local population to abandon the area of Cerska, Žepa, Srebrenica, and Goražde".[580]

2. Establishment of International Monitoring

(a) United Nations Protection Force in BiH (UNPROFOR)

166. Established by UN Security Council Resolution 743 on 21 February 1992,[581] the United Nations Protection Force in BiH ("UNPROFOR") was based in Sarajevo ("UNPROFOR HQ").[582] The first substantial presence of UNPROFOR troops in BiH occurred with the establishment of the "safe areas" in the spring of 1993.[583] These units were sent to deter hostile action by the warring parties through their presence, to facilitate and assist with the distribution of humanitarian aid, and to demilitarise the enclave.[584]

167. UNPROFOR maintained separate, parallel civil and military chains of command.[585] In 1995, each reported to the highest command—the United Nations Protection Force in Zagreb ("UNPF").[586] In the UNPF, Yasushi Akashi represented the UN civilian leadership as the Special Representative for the Secretary-General ("SRSG"),[587] while General Bernard Janvier held the highest position in the military command structure.[588] In 1995, General Rupert Smith was the Military Commander of UNPROFOR.[589] From approximately March 1995 until September of

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580 Ex. P02434, p. 1; Richard Butler, T. 16458–16460 (11 July 2011). Cerska, Žepa, Srebrenica, and Goražde are parts of the larger Birač and Podrinje regions referenced in Directive 4. Richard Butler, T. 16459 (11 July 2011). Lazić testified that the Drina Corps did not have the necessary forces and ability to deal with the tasks and as such, they were postponed until 1995. Milenko Lazić, Ex. P02733, PT. 21830 (5 June 2008).

581 Ex. D00122, p. 8.

582 Rupert Smith, Ex. P02086, PT. 17464–17465 (5 November 2007). *See also* Louis Fortin, T. 3068 (23 June 2010). UNPROFOR HQ is sometimes referred to as "BH command" as that was what it was called from establishment up until sometime just before July 1995 when UN Headquarters changed the name of the mission. Louis Fortin, T. 3067–3068 (23 June 2010).

583 Ex. D00122, p. 20. At that time, the Security Council called upon the Secretary-General to "take immediate steps to increase the presence of the United Nations Protection Forces in Srebrenica and its surroundings". Adjudicated Fact 30.

584 Robert Franken, Ex. P00598, PT. 2435 (16 October 2006). *See also* Rupert Smith, Ex. P02086, PT. 17470 (5 November 2007); PW-002, Ex. P01497, KT. 1489 (28 March 2000); Evert Rave, T. 6779 (26 October 2010); Evert Rave, Ex. P01004, KT. 832 (20 March 2000). These duties included assisting and protecting the NGOs, Médecins Sans Frontières ("MSF"), and the United Nations High Commissioner for Refugees ("UNHCR"). Evert Rave, T. 6779 (26 October 2010); Evert Rave, Ex. P01004, KT. 832 (20 March 2000).

585 Rupert Smith, T. 11574–11575 (21 March 2011), T. 11679–11680 (23 March 2011).

586 Louis Fortin, T. 3086 (23 June 2010).

587 Rupert Smith, Ex. P02086, PT. 17465 (5 November 2007).

588 Rupert Smith, Ex. P02086, PT. 17465 (5 November 2007); Louis Fortin, T. 3067–3068 (23 June 2010).

589 Rupert Smith, Ex. P02086, PT. 17462, 17464 (5 November 2007); Louis Fortin, T. 3068 (23 June 2010). Antonio Pedauye was the civilian chief of mission in July–August 1995. Rupert Smith, T. 11574–11575 (21 March 2011).

1995, Brigadier General Cornelis Nicolai served as Smith's Chief of Staff in the UNPROFOR HQ.[590]

168. UNPROFOR was divided into three Sectors—Sector South, Sector North-East, and Sector Sarajevo.[591] Sector North-East was responsible for the Srebrenica enclave.[592] Sector Sarajevo was responsible for Sarajevo, as well as the Žepa and Goražde enclaves.[593] In this sector, David Harland was Civil Affairs Officer;[594] Brigadier General Hervé Gobilliard was the Military Commander and reported to Smith.[595] From May 1995, Colonel Louis Fortin was the Military Assistant to Gobilliard.[596]

(i) DutchBat (Srebrenica)

169. The Dutch Battalion of UNPROFOR ("DutchBat") rotated into the enclave in January 1995.[597] The DutchBat Headquarters was located in Potočari ("UN compound")[598] with a smaller command centre located five kilometres south in Srebrenica town ("DutchBat Bravo Company compound").[599] DutchBat was commanded by Lieutenant Colonel Thomas Karremans[600] and Major

590 Rupert Smith, Ex. P02086, PT. 17467, 17609 (5 November 2007); Louis Fortin, T. 3069 (23 June 2010). As Chief of Staff, Nicolai managed the day-to-day operations of UNPROFOR. Cornelis Nicolai, Ex. P00674, PT. 18447 (29 November 2007).

591 *See* Louis Fortin, T. 3067 (23 June 2010). In his evidence in the present trial, the Chamber notes that Fortin refers to "Sector North-West" rather than "Sector North-East"; given his prior testimony on the subject, and in light of the totality of the evidence, the Chambers finds that the correct reference is "Sector North-East". *See, e.g.,* Louis Fortin, Ex. P00586 (confidential), PT. 18311–18312 (private session) (27 November 2007). *See also* Ex. D00055, p. 23.

592 Ex. D00020, pp. 11-12; Pieter Boering, Ex. P01461, PT. 1891 (19 September 2006); Robert Smith, Ex. P02086, PT. 17637 (7 November 2007); Robert Franken, Ex. P00598, PT. 2633–2634 (18 October 2006). *See also* Louis Fortin, T. 3070 (23 June 2010).

593 Louis Fortin, T. 3067 (23 June 2010); Rupert Smith, T. 11596 (22 March 2011). The Sector Sarajevo was located in the PTT Building in Sarajevo. Rupert Smith, Ex. P02086, PT. 17467 (5 November 2007); Louis Fortin, T. 3068 (23 June 2010); Louis Fortin, Ex. P00587, PT. 18244 (26 November 2007).

594 Rupert Smith, T. 11575 (21 March 2011), T. 11596 (22 March 2011); Louis Fortin, T. 3226 (24 June 2010). Civil affairs officers had a mandate that involved advising on political, humanitarian, diplomatic, and media matters; a civil affairs officer served as an "all-points person for the UNPROFOR military chain" to the UN political side. Edward Joseph, Ex. P01949, PT. 14145 (22 August 2007); Edward Joseph, T. 10756–10757 (3 March 2011).

595 Rupert Smith, Ex. P02086, PT. 17467–17468 (5 November 2007); Louis Fortin, T. 3068 (23 June 2010). The senior-ranking general, most often Gobilliard, would take over command when Smith was away. Cornelis Nicolai, Ex. P00674, PT. 18447–18448 (29 November 2007).

596 Louis Fortin, Ex. P00587, PT. 18244 (26 November 2007).

597 Adjudicated Fact 37; Robert Franken, T. 3389 (30 June 2010). Franken testified that DutchBat consisted of 318 soldiers when dispatched in January 1995, though, due to VRS restrictions on movement, by July 1995 there were only 147 DutchBat soldiers in the Srebrenica enclave. Robert Franken, Ex. P00598, PT. 2449–2450 (16 October 2006). *See also* Ex. D00122, p. 55 (recording that, of 600 DutchBat personnel dispatched to the Srebrenica safe area in January 1995, approximately 300 of them were infantry soldiers); Adjudicated Fact 35 (The peacekeepers were lightly armed and at one time numbered no more than 600 men (a much smaller force than had been originally requested).) DutchBat belonged to Sector North-East. *See supra* para. 168.

598 Rupert Smith, Ex. P02086, PT. 17479–17480 (5 November 2007); Pieter Boering, Ex. P01461, PT. 1870 (19 September 2006).

599 Adjudicated Fact 36.

600 Robert Franken, Ex. P00598, PT. 2435–2436 (16 October 2006).

Robert Franken was the Deputy Commander.[601] DutchBat held 12 observation posts ("OPs"),[602] which were located at the edge of the UN demarcation line.[603]

(ii) UKRCoy (Žepa)

170. When the Žepa enclave was declared a "safe area", a unit of the Ukranian Company of UNPROFOR ("UKRCoy") was dispatched to the enclave.[604] UKRCoy Headquarters was located in the Žepa elementary school,[605] and Colonel Sejmon Dudnjik was the Commander.[606] There were nine OPs in Žepa.[607]

(iii) UNPROFOR Reporting and Contacts

171. UNPROFOR Sector Commanders reported daily to Headquarters in Sarajevo,[608] and one overall report—approved by Smith—was sent to UNPF.[609] The report was based on information from UNPROFOR officers on the ground who reported incidents to their commanders.[610] UNPROFOR reports also relied on informal direct communication between Nicolai and Karremans,[611] tactical air command post ("TACP") information, and direct contact with both the VRS and the ABiH.[612]

172. At a political level, UNPROFOR representatives met with various civilian and military leaders of the Bosnian Muslims and the Bosnian Serbs.[613] UNPROFOR also had contact with

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601 Robert Franken, Ex. P00598, PT. 2435 (16 October 2006).

602 Adjudicated Fact 38. Most of the time, groups of Bosnian Serb and Bosnian Muslim soldiers also maintained shadow positions near these outposts. Adjudicated Fact 39.

603 Robert Franken, T. 3330 (30 June 2010).

604 Louis Fortin, T. 3070 (23 June 2010); Louis Fortin, Ex. P00586 (confidential), PT. 18267 (private session) (27 November 2007); Hamdija Torlak, T. 4256 (23 August 2010). The UKRCoy was comprised of about 600 people over three companies with the other two in Sarajevo and Goražde with approximately 80 soldiers dispatched to the Žepa enclave. Louis Fortin, T. 3070 (23 June 2010); Louis Fortin, Ex. P00586 (confidential), PT. 18267 (private session) (27 November 2007). UKRCoy was a part of Sector Sarajevo. *See supra* para. 168.

605 Hamdija Torlak, T. 4273 (23 August 2010).

606 Hamdija Torlak, T. 4274 (23 August 2010), T. 4585 (30 August 2010).

607 Ex. D00050, p. 9. *See also* Hamdija Torlak, T. 4273 (23 August 2010).

608 Cornelis Nicolai, T. 3977 (17 August 2010). This information was compiled from UNPROFOR troop reports from the sectors of responsibility. Cornelis Nicolai, T. 4142 (18 August 2010).

609 Cornelis Nicolai, T. 3980 (17 August 2010). Nicolai received situation reports that served as the basis for briefings for Smith and other staff members. Cornelis Nicolai, Ex. P00674, PT. 18582 (30 November 2007). *See, e.g.*, Ex. P00675. UNMO reports complemented the UNPROFOR reports. Cornelis Nicolai, T. 3873 (12 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18583 (30 November 2007). Each morning and evening, Smith chaired a meeting of staff members and section heads who provided daily oral reports; in this way, "everybody was brought fully up to speed" twice a day. Cornelis Nicolai, T. 3979–3980 (17 August 2010). UNMO, UNHCR, and ICRC representatives attended UNPROFOR's meetings and provided reports. Cornelis Nicolai, T. 3873 (12 July 2010), T. 3977–3978 (17 August 2010).

610 Robert Franken, Ex. P00598, PT. 2672, 2674–2675 (18 October 2006).

611 Cornelis Nicolai, Ex. P00674, PT. 18458 (29 November 2007). *See also* Louis Fortin, Ex. P00587, PT. 18249–18250 (26 November 2007).

612 Louis Fortin, Ex. P00587, PT. 18250 (26 November 2007).

613 Rupert Smith, Ex. P02086, PT. 17469–17470 (5 November 2007). *See, e.g.*, Ex. P01430; Ex. P02091.

members of the VRS Main Staff, most frequently Milovanović; when Milovanović was absent, they were put in contact with Mladić, the Accused, or Gvero.[614]

(b) UNMO

173. Separate from UNPROFOR,[615] the mission of the United Nations Military Observers in Srebrenica ("UNMO") was to observe any violations of the demilitarisation agreement and initiate any necessary meetings between the warring parties.[616] UNMO also served as an intermediary between the warring parties and UNPROFOR, who were tasked with implementing the cease-fire agreements.[617] They sought to ensure that weapons which had been surrendered in a safe area were kept there[618] and negotiated for permission to leave or enter the enclave on behalf of other UN agencies and NGOs.[619] UNMO's position was considered neutral[620] and observers were never armed.[621] By June 1995, only three UNMO officers remained in the Srebrenica enclave and only two, including Lieutenant Colonel Joseph Kingori, remained in early July 1995.[622]

3. Military and Humanitarian Situation in the Enclaves

(a) Kravica Attack and Counter-Offensive

174. On Serbian Orthodox Christmas, 7 January 1993, Bosnian Muslim fighters commanded by Orić attacked the Bosnian Serb village of Kravica, causing many casualties.[623] This launched a VRS counter-offensive that eventually captured the villages of Konjević Polje and Cerska, severed the link between Srebrenica and Žepa, and reduced the size of the Srebrenica enclave to 150 square kilometres.[624] As a result, large groups of Bosnian Muslims fled to Srebrenica town which swelled

614 Cornelis Nicolai, Ex. P00674, PT. 18448 (29 November 2007). On 8 and 9 July 1995, Nicolai's main point of contact in the VRS was the Accused; this switched to Gvero after 10 or 11 July 1995. Cornelis Nicolai, Ex. P00674, PT. 18450 (29 November 2007), PT. 18550 (30 November 2007); Cornelis Nicolai, T. 3941–3942 (13 July 2010). The Accused and Gvero were both regarded as intermediaries between UNPROFOR and Mladić. Cornelis Nicolai, T. 3941–3942 (13 July 2010).

615 Joseph Kingori, T. 5405–5406, 5408–5409 (15 September 2010).

616 Ex. P00992, p. 4; Joseph Kingori, Ex. P00950, PT. 19156 (12 December 2007); Joseph Kingori, T. 5374 (14 September 2010). While the UN Security Council Resolution 743 on 21 February 1992 provided for UNMOs to patrol certain limited areas in BiH, it did not occur as it was to take place after the demilitarisation of the protected areas in Croatia. Ex. D00122, p. 9.

617 Ex. P00992, p. 4; Joseph Kingori, T. 5371 (14 September 2010).

618 Joseph Kingori, T. 5374 (14 September 2010). UNMO's mission was not to seize small weapons if found in the enclave, but to report about such incidents. Joseph Kingori, T. 5424 (15 September 2010).

619 Joseph Kingori, T. 5374 (14 September 2010).

620 Ex. P00992, p. 4; Joseph Kingori, Ex. P00950, PT. 19512 (11 January 2008).

621 Joseph Kingori, T. 5374–5375 (14 September 2010).

622 Joseph Kingori, Ex. P00950, PT. 19172 (13 December 2007); Joseph Kingori, T. 5645 (20 September 2010).

623 Ex. D00122, p. 13; PW-063, T. 6500–6503 (19 October 2010); Momir Nikolić, T. 12540–12541 (11 April 2011); Božo Momčilović, T. 9803–9808 (14 February 2011); Ex. D00160, p. 2; Adjudicated Fact 20. The attack on Kravica came just after a Bosnian Muslim fighters' attack on the village of Bjelovac in the Bratunac municipality leaving over 100 dead, mostly civilians. Momir Nikolić, T. 12540–12541 (11 April 2011); PW-063, T. 6499–6500 (19 October 2010).

624 Ex. D00122, p. 13; Ex. P02473, p. 18; Richard Butler, T. 16462–16463 (11 July 2011); PW-013, T. 9841, 9844

to as many as 50,000 to 60,000 people.[625] While advancing on Srebrenica, the VRS destroyed access points to the town's water supplies; food, medicine, and other essentials were also extremely scarce creating terrible living conditions.[626]

175. On 11 March 1993, then-UNPROFOR Commander Philippe Morillon visited Srebrenica and told the large, panicked crowd that the town was under UN protection.[627] As he was leaving the enclave, the VRS shelled a playground where people had gathered to celebrate Morillon's declaration of a safe area.[628] Many were killed or wounded.[629]

(b) UN Declarations of Srebrenica, Žepa, and Goražde Enclaves as "Safe Areas"

176. On 16 April 1993, the UN Security Council passed Resolution 819, declaring that "all parties and others concerned treat Srebrenica and its surroundings as a 'safe area' which should be free from any armed attack or any other hostile act" and calling for "the immediate cessation of armed attacks by Bosnian Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica".[630] It further requested the Secretary-General to "take immediate steps to increase the presence of UNPROFOR in Srebrenica and its surroundings".[631] Following Resolution 819, on 18 April 1993, the VRS and the ABiH signed an agreement for the demilitarisation of Srebrenica.[632] On the same day, the first group of UNPROFOR troops arrived in Srebrenica.[633] Humanitarian aid gradually started arriving in Srebrenica via air drops and UN High Commissioner for Refugees ("UNHCR") convoys.[634] By the

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(14 February 2011); Adjudicated Fact 20. *See also* PW-022, Ex. P00097, PT. 3931–3933 (15 November 2006). Prior to this, the enclave had grown to include Cerska to the west and had reached a peak size of 900 square kilometres. Ex. D00122, p. 13; Adjudicated Fact 19.

625 Ex. D00122, p. 13; Adjudicated Fact 21. *See also* Mirsada Malagić, T. 10011 (16 February 2011); PW-013, T. 9844 (14 February 2011). In early 1993, there were Bosnian Muslims in Srebrenica from several neighbouring municipalities such as Vlasenica, Zvornik, Bratunac, and Goražde. PW-022, T. 1103 (14 April 2010); PW-022, Ex. P00097, PT. 3930 (15 November 2006).

626 Ex. D00122, pp. 13–14; PW-022, T. 1106 (14 April 2010); PW-022, Ex. P00097, PT. 3930–3931 (15 November 2006); PW-013, T. 9844 (14 February 2011); PW-073, T. 616 (12 March 2010); Hamdija Torlak, T. 4253 (23 August 2010); Richard Butler, T. 16463 (11 July 2011); Adjudicated Fact 22.

627 Ex. D00122, p. 13–14; Richard Butler, T. 16463 (11 July 2011); PW-022, Ex. P00097, PT. 3933 (15 November 2006); Adjudicated Fact 23. *See also* Adjudicated Fact 29.

628 PW-022, Ex. P00097, PT. 3934–3937 (15 November 2006); PW-013, T. 9844–9853 (14 February 2011).

629 Ex. P01814, p. 2; PW-013, T. 9847–9848 (14 February 2011); PW-022, T. 1118–1119 (14 April 2010); PW-022, Ex. P00097, PT. 3936 (15 November 2006); PW-022, Ex. P00096 (confidential), PT. 4054 (private session) (16 November 2006).

630 Ex. P02134, p. 2. *See also* Richard Butler, T. 16463–16464 (11 July 2011), T. 16892–16893 (20 July 2011); Adjudicated Facts 26. *See also* Adjudicated Fact 25 (Resolution 819 further states that it "condemns and rejects the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas [. . .] as part of its abhorrent campaign of ethnic cleansing".)

631 Ex. P02134, p. 2; Ex. D00122, p. 14; Adjudicated Fact 30. In April 1993, about 170 UNPROFOR troops were deployed in the Srebrenica area. Ex. D00122, p. 19.

632 Ex. P02121. *See also* Ex. D00122, p. 20; Rupert Smith, Ex. P02086, PT. 17641–17643 (7 November 2007); Adjudicated Fact 31.

633 Adjudicated Fact 33. *See also* Richard Butler, T. 16893 (20 July 2011). Fresh troops were rotated approximately every six months. Adjudicated Fact 34.

634 PW-022, Ex. P00097, PT. 3933 (15 November 2006); PW-073, T. 616 (12 March 2010). Bosnian Serbs often took

end of April 1993, the UNHCR had evacuated approximately 8,000 to 9,000 Bosnian Muslims from Srebrenica to Tuzla.[635] However, the Bosnian Muslim government opposed the evacuations, asserting that they contributed to "ethnic cleansing" of the territory.[636]

177. On 6 May 1993, the UN Security Council passed Resolution 824, by which it declared that Žepa and Goražde should also be treated as "safe areas".[637]

4. Cessation of Hostilities and Demilitarisation

(a) Cease-Fire and Demilitarisation

178. On 8 May 1993, the VRS Main Staff Commander Mladić and the ABiH Commander General Sefer Halilović came to an agreement on a cease-fire and demilitarisation of Srebrenica and Žepa which called for the enclaves to be disarmed under UNPROFOR supervision.[638] During negotiations about demilitarisation of the enclaves, demarcation lines were established between the VRS and the ABiH, though there was a disagreement about the precise boundaries outside of the urban centre of Srebrenica.[639]

179. In early or mid-May 1993, the demilitarisation process took place and UNPROFOR enforced the prohibition on carrying of weapons in the enclaves.[640] UNPROFOR kept a list of heavy weaponry which had been seized from VRS positions[641] and the items were kept in the

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supplies from the trucks before allowing them to continue. PW-073, T. 611, 643 (12 March 2010). *See infra* paras. 193–204. ABiH units based in Srebrenica engaged in military activities to get back Bosnian Muslim villages "in search of food". PW-071, T. 6204–6205 (closed session) (6 October 2010) (the units took what PW-071 described as "war booty" such as food, horses, bullets, and wagons).

635 Ex. D00122, p. 14; Richard Butler, T. 16463 (11 July 2011); PW-013, T. 9844 (14 February 2011); Adjudicated Fact 24.

636 Ex. D00122, p. 14; Richard Butler, T. 16463 (11 July 2011); PW-013, T. 9844 (14 February 2011), T. 9932–9933 (15 February 2011); Adjudicated Facts 24.

637 Ex. P02135; Ex. D00114. *See also* Adjudicated Fact 26. According to Butler, a Main Staff combat order dated 1 May 1993 for the "liberation of Žepa and Goražde" reflects a plan by the VRS to "move and take down Muslim military and civilians populations in Žepa and Goražde", in anticipation of the declaration of these areas as safe areas soon after Srebrenica. Richard Butler, T. 16464–16465 (11 July 2011); Ex. P02497. Torlak testified that these actions were halted when Žepa was declared a safe area. Hamdija Torlak, T. 4254 (23 August 2010).

638 Ex. D00021. *See also* Rupert Smith, Ex. P02086, PT. 17643–17647 (7 November 2007); Richard Butler, T. 16929–16930 (20 July 2011), T. 17085–17090 (22 August 2011); Joseph Kingori, T. 5411 (15 September 2010); Momir Nikolić, T. 12545–12546 (11 April 2011); Hamdija Torlak, T. 4274 (23 August 2010).

639 Joseph Kingori, T. 5437 (15 September 2010); Adjudicated Fact 32. Although a commission was formed to try to reach an agreement on the border, the parties refused to speak to each other, so the UN line became the *de facto* accepted border. Robert Franken, T. 3330–3331 (30 June 2010).

640 Hamdija Torlak, T. 4274–4275 (23 August 2010).

641 Osman Salkić, T. 7860 (22 November 2010). The ABiH had very few heavy weapons, unlike the VRS. Louis Fortin, T. 3110, 3120 (23 June 2010).

DutchBat Bravo Company compound.[642] However, DutchBat found it difficult to control small arms, such as pistols.[643]

(b) Non-Compliance with Demilitarisation

180. Despite these initial efforts, the demilitarisation was never fully realised.[644] While Halilović had immediately ordered the ABiH forces out of the demilitarised zones after signing the cease-fire agreement, he also ordered that no functioning weapons should be turned over to UNPROFOR.[645] The ABiH conducted military operations out of the Srebrenica enclave[646] and Bosnian Muslim civilians and ABiH forces were moving in and out of the Srebrenica and Žepa enclaves.[647] As a result, the VRS maintained military forces around the perimeter of both enclaves to counter attacks.[648] Per the agreement, the VRS was meant to have removed their weapons from this aggressive posture; however, VRS rocket-launchers, anti-aircraft guns, and artillery weapons were facing the Srebrenica enclave and the VRS was fully armed.[649] The VRS was present even within the enclave, reaching far beyond the ceasefire line.[650] Momir Nikolić testified that then-Bratunac Brigade Commander Slavko Ognjenović, ordered the use of "everything that was forbidden in

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642 Evert Rave, Ex. P01004, KT. 833–834 (20 March 2000), KT. 931, 943–944 (21 March 2000). Rupert Smith, T. 11546 (21 March 2011); Joseph Kingori, T. 5386–5387 (14 September 2010).

643 Joseph Kingori, T. 5387 (14 September 2010). Franken stated that it was difficult to disarm anyone carrying rifles, because DutchBat was not authorised to enter houses to look for weapons; the local police had to be called to carry out a search. Robert Franken, T. 3384 (30 June 2010), T. 3412 (1 July 2010). DutchBat frequently received information from its patrols that armed men were seen in the enclave; upon such information, they would attempt to disarm them. Evert Rave, T. 6783–6785 (26 October 2010), T. 6832–6833 (27 October 2010); Evert Rave, Ex. P01004, KT. 834 (20 March 2000), KT. 931 (21 March 2000).

644 Evert Rave, T. 6778–6780, 6782–6785 (26 October 2010); Evert Rave, Ex. P01004, KT. 919, 932 (21 March 2000); Momir Nikolić, T. 12310–12311 (5 April 2011), T. 12549 (11 April 2011); Milenko Lazić, Ex. P02733, PT. 21754 (4 June 2008). *See also* Rupert Smith, Ex. P02086, PT. 17646–17652 (7 November 2007); Manojlo Milovanović, T. 14368 (19 May 2011); Adjudicated Fact 44. It was Milovanović's position that UNPROFOR lied about the fact that the enclaves were demilitarised, and stated that this was a reason for the Main Staff's distrust of UNPROFOR. Manojlo Milovanović, T. 14319–14320 (18 May 2011). Milovanović testified that the arming and organising of the Bosnian Muslims in the enclaves occurred with the full knowledge of UNPROFOR. Manojlo Milovanović, T. 14368–14370, 14376 (19 May 2011). Smith emphasised that demilitarisation was not understood as UNPROFOR's task, but rather a matter to be resolved between the parties; UNPROFOR was there in an observer role. Rupert Smith, Ex. P02086, PT. 17769–17772 (9 November 2007).

645 Adjudicated Fact 46. *See also* Evert Rave, T. 6835 (27 October 2010); Ex. D00126, pp. 3–4; Ex. D00123. Accordingly, the ABiH handed over only about 300 weapons, which were largely old and dysfunctional, and a small number of heavy weapons. Ex. D00122, p. 20. *See also* Adjudicated Fact 46.

646 Richard Butler, T. 16925–16927 (20 July 2011); Momir Nikolić, T. 12549 (11 April 2011); Novica Simić, Ex. P02756, PT. 28656 (21 November 2008); Adjudicated Fact 43.

647 Momir Nikolić, T. 12547 (11 April 2011). At least some humanitarian aid coming into the enclave was appropriated by the ABiH. Adjudicated Fact 47.

648 Richard Butler, T. 16892, 16925–16926 (20 July 2011). *See* Ex. D00300, p. 5 (Operational Directive 6 stating that "The Drina Corps: use some of the forces to maintain the blockade of enemy forces in the Žepa, Srebrenica, and Goražde enclaves"). Operational Directive 6 was drafted by Miletić and issued by Karadžić on 11 November 1993. It re-visits portions of Directive 4, including "to create objective conditions for achievement of the [VRS] strategic war goals". Ex. D00300, p. 3.

649 Joseph Kingori, T. 5402 (15 September 2010); Joseph Kingori, Ex. P00950, PT. 19374–19375 (10 January 2008). *See also* Adjudicated Fact 40.

650 Joseph Kingori, Ex. P00950, PT. 19342 (10 January 2008).

relation to the enclave" to make the life of the Bosnian Muslims in Srebrenica unbearable so that they would leave as soon as possible.[651]

(c) Continued Goal of "Serbian Podrinje"

181. On 4 July 1994, Ognjenović issued a report to the Brigade members concerning the situation in the Srebrenica enclave.[652] Calling on the language of Directive 4, Ognjenović stated:

> We must attain our final goal – an entirely Serbian Podrinje. The enclaves of Srebrenica, Žepa, and Gorazde must be defeated militarily. We must continue to arm, train, discipline, and prepare the Republika Srpska Army for the execution of this crucial task—the expulsion of Muslims from the Srebrenica enclave. There will be no retreat when it comes to the Srebrenica enclave, we must advance. The enemy's life has to be made unbearable and their temporary stay in the enclave impossible so that they leave the enclave en masse as soon as possible, realising that they cannot survive there.[653]

182. On 24 July 1994, Drina Corps Commander Živanović issued an order to subordinate units, referring to a briefing provided to Mladić on 1 July 1994.[654] Noting that the ABiH and UNPROFOR did not fulfil the agreed demilitarisation and continued attacks against VRS soldiers and Bosnian Serb civilians, Živanović stated that the brigade command and units had to take measures to prevent these actions and reduce the enclaves to the area listed in the agreement.[655] According to Momir Nikolić, the aims of the order were to reduce the combat readiness of DutchBat to a minimum so that it would not be able to carry out its duties; to create pressure on the Srebrenica enclave so that as many people as possible would leave; and to implement a complete blockade or physical sealing off of the enclave "to create a chaotic situation in which life was impossible, simply unfit for people".[656]

(d) Agreement on the Complete Cessation of Hostilities

183. On 31 December 1994, the Agreement on Complete Cessation of Hostilities ("COHA", also referred to as the "Carter Agreement"[657]) was signed by, among others, the BiH President Alija Izetbegović, the ABiH Commander Rasim Delić, Karadžić, and Mladić in the presence of

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651 Momir Nikolić, T. 12278 (4 April 2011).

652 Ex. P02158. *See also* Momir Nikolić, T. 12273 (4 April 2011).

653 Ex. P02158, p. 3. *See also* Momir Nikolić, T. 12276–12277 (4 April 2011); Richard Butler, T. 16468–16469, 16479 (12 July 2011).

654 Ex. P02159, p. 1. *See also* Momir Nikolić, T. 12298–12299 (5 April 2011).

655 Ex. P02159, p. 5. *See also* Momir Nikolić, T. 12303–12305 (5 April 2011). The order also contains instructions for mining around the enclave as well as the construction of a stone wall or wooden fence so that the enclave would be completely surrounded or fenced in, making it impossible for the Bosnian Muslims to leave the enclave. Ex. P02159, p. 4. *See also* Momir Nikolić, T. 12302–12303 (5 April 2011).

656 Momir Nikolić, T. 12305 (5 April 2011). With respect to sealing off the enclave, which could be interpreted as being contradictory to the order to create conditions for people to leave, Živanović meant sealing off the enclave to the extent that it prevented people from leaving in an organised way through the combat positions of the Bratunac Brigade, because it was well known that individuals could not be prevented from leaving by other routes. Momir Nikolić, T. 12305–12306 (5 April 2011).

UNPROFOR.[658] It was to take effect as of 1 January 1995 for an initial period of four months.[659] The COHA established that UNPROFOR would monitor the cessation of hostilities through a Central Joint Commission.[660] The Commission would be chaired by UNPROFOR and included representatives from the warring parties.[661] As directed by the COHA, the Central Joint Commission held its first meeting at the Sarajevo Airport[662] on 1 January 1995.[663] Representatives of all parties to the agreement were present, including the Accused on behalf of the VRS.[664] The Accused regularly attended subsequent meetings in the same capacity.[665] Subordinates of the security organs were apprised of agreements arising out of the meetings and given orders for implementation.[666]

B. 1995

1. Violations of the COHA

184. Following the signing of the COHA, the ABiH began to re-supply and reorganise its forces planning for an offensive to start in the spring of 1995.[667] Weapons, military equipment, uniforms, and ammunition were brought into the Srebrenica and Žepa enclaves up through the first half of

657 Rupert Smith, T. 11540–11541 (21 March 2011).
658 Ex. P01011. *See also* Milenko Todorović, T. 13133–13134 (20 April 2011); Manojlo Milovanović, T. 14347–14351 (19 May 2011); Ex. D00256.
659 Ex. P01011, p. 1.
660 Ex. P01011, p. 1; Slavko Kralj, T. 18274 (23 January 2012); Rupert Smith, Ex. P02086, PT. 17468, 17511 (5 November 2007). Joint Central Commissions were also formed at the corps level, to enable direct cooperation of the VRS and the ABiH. Slavko Kralj, T. 18274 (23 January 2012); Milenko Todorović, T. 13112–13113 (20 April 2011). *See, e.g.*, Ex. D00251. Members of the British Special Forces were engaged as Joint Commission Observers (JCOs) to observe and inform the Joint Commission about the efficacy of the COHA; they were answerable to the UNPROFOR Commander. Rupert Smith, T. 11820 (24 March 2011); Thomas Dibb, T. 4898-4900 (6 September 2010); Thomas Dibb, Ex. P00741, PT. 16273 (15 October 2007).
661 Slavko Kralj, T. 18274–18275 (23 January 2012).
662 Ex. P01011, p. 1.
663 Ex. D00249, p. 2.
664 Ex. D00249, p. 2.
665 Manojlo Milovanović, T. 14314–14317, 14346–14347 (18 May 2011). *See, e.g.*, Ex. D00250; Ex. D00225; Ex. D00255. The Accused also received reports from the corps-level commissions. *See, e.g.*, Ex. D00251.
666 Milenko Todorović, T. 13110–13112 (20 April 2011). *See, e.g.*, Ex. D00225.
667 Richard Butler, T. 17055–17057, 17069–17073 (22 August 2011); Ex. D00304. *See also* Manojlo Milovanović, T. 14348–14350, 14352–14357, 14410 (19 May 2011).

1995.[668] The ABiH, which had an especially strong military presence in the Srebrenica enclave,[669] continued to carry out reconnaissance and sabotage activities against the VRS.[670]

185. The issue of lack of ABiH demilitarisation was a source of constant dissatisfaction for the VRS, which they routinely communicated to UNPROFOR.[671] Although the VRS initially abided by the COHA,[672] from February to early April of 1995, it became increasingly clear to Smith that neither warring side intended to honour the cease-fire agreement and the COHA would break down.[673]

2. Directives 7 and 7/1

(a) Directive 7

186. Following a combat readiness briefing in January 1995,[674] Karadžić issued the Directive For Further Operations No. 7 ("Directive 7") to the Corps, the Air Force and Air Defence, and the Centre of Military Schools of the VRS on 8 March 1995.[675] Like other directives, Directive 7

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668 Ex. D00357; Ex. P00958; Ex. P00959; Ex. D00067; Ex. P00984, pp. 3–4; Robert Franken, T. 3417 (1 July 2010); Momir Nikolić, T. 12575 (11 April 2011); Adjudicated Fact 47. Materials were flown into the Žepa enclave, despite the no-fly zone, until a helicopter was shot down on 7 May 1995. Ex. D00063, pp. 9–10; Hamdija Torlak, T. 4276, 4279 (23 August 2010), T. 4572 (30 August 2010). *See also* Osman Salkić, T. 7863 (22 November 2010); Ex. D00358; Ex. D00282; Ex. D00016.

669 Momir Nikolić, T. 12556–12557 (11 April 2011). The demilitarised zones housed the 280–284th units of the ABiH, as well as a mountain battalion and other units. Momir Nikolić, T. 12577–12578 (11 April 2011); Ex. D00207, p. 1. In 1995, Orić commanded the ABiH forces in the Srebrenica enclave. Momir Nikolić, T. 12585 (11 April 2011).

670 Momir Nikolić, T. 12561, 12563–12564 (11 April 2011); PW-057, T. 15682 (closed session) (16 June 2011). *See, e.g.*, Ex. D00205 (request from the Drina Corps Command to UNPROFOR dated 20 March 1995 requesting that UNPROFOR prevent the ABiH from launching further combat operations from the Srebrenica enclave); Ex. D00283 (intelligence report of the RS MUP of 22 May 1995 recalling ongoing reconnaissance and ambush activities).

671 Momir Nikolić, T. 12270 (4 April 2011), T. 12549, 12553, 12560 (11 April 2011). *See also* Rupert Smith, Ex. P02086, PT. 17770 (9 November 2007). *See, e.g.*, Ex. D00196.

672 Manojlo Milovanović, T. 14350 (19 May 2011). *See also* Ex. D00265 (showing implementation of these agreements by the VRS).

673 Rupert Smith, Ex. P02086, PT. 17471 (5 November 2007), PT. 17653–17654 (7 November 2007). *See also* Ex. P02117, p. 3.

674 Ljubomir Obradović, T. 11993 (29 March 2011); Novica Simić, Ex. P02756, PT. 28659–28660 (21 November 2008).

675 Ex. P01214; Novica Simić, Ex. P02756, PT. 28511–28515 (19 November 2008); Ljubomir Obradović, T. 11992 (29 March 2011), T. 12008–12009 (30 March 2011); Richard Butler, T. 16478–16479 (12 July 2011), T. 17277–17278 (25 August 2011), T. 17451–17452 (31 August 2011); Adjudicated Fact 60. Directive 7 was drafted by Miletić in accordance with the "full" or "complete" method. Ljubomir Obradović, T. 11992–11993 (29 March 2011). *See also* Ex. P02880, p. 8 (explaining this process of drafting). While issued on 8 March 1995, some units did not receive it until 17 March 1995. *See, e.g.*, Ex. P01214; Novica Simić, Ex. P02756, PT. 28513–28515 (19 November 2008). *See also* Mirko Trivić, T. 8607 (7 December 2010). As lower levels of command did not need Directive 7 for day-to-day operations, many were not aware of this actual Directive until much later. Milomir Savčić, T. 15936, 15969 (23 June 2011); Slavko Kralj, T. 18499–18500 (26 January 2012). *See also* Milenko Lazić, Ex. P02733, PT. 21808 (5 June 2008); Ljubomir Obradović, T. 11996 (29 March 2011), T. 12012–12013 (30 March 2011). Salapura testified that Mladić said that operations planned at that level were secret and made by the inner circle of commanders. Petar Salapura, T. 13497 (2 May 2011).

reflected the "strategic goals" to be implemented by the VRS units for the upcoming period.[676] Every sector of the VRS Main Staff had significant input into the drafting of Directive 7.[677]

187. Directive 7, regarded as a state secret, addressed the contemporaneous international and political situation, outlining the VRS position on the COHA.[678] It further detailed "probable objectives and plans" of the warring parties in the former Yugoslavia, including the ABiH.[679] Finally, it set forth tasks and directions to the VRS units.[680]

188. The Srebrenica and Žepa enclaves were specifically considered in Directive 7, calling on the Drina Corps to carry out "complete physical separation of Srebrenica from Žepa [...] as soon as possible, preventing even communication between individuals in the two enclaves".[681] It further directed the Drina Corps "[b]y planned and well-thought-out combat operations [to] create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa".[682] This included limiting supplies to the enclaves, instructing:

> The relevant state and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our goodwill, while at the same time avoiding condemnation by the international community and international public opinion.[683]

Directive 7 further called for plans for "an operation named Jadar with the task of breaking up and destroying the Muslims forces" in the Srebrenica and Žepa enclaves and "definitively liberating the Drina valley region" if UNPROFOR forces should abandon the enclaves.[684]

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676 *See infra* paras. 99–100. Butler testified that unlike Directive 4, Directive 7 went out in Karadžić's name as the political bodies took a greater role in directing the war effort by 1995. Richard Butler, T. 16478–16479 (12 July 2011).

677 Ljubomir Obradović, T. 11996 (29 March 2011). *See also* Richard Butler, T. 17278–17279 (25 August 2011). The Intelligence Administration would have been involved in the formation of the items 1 and 2, entitled "The Main Characteristics of the International Military and Political situation" and "Muslim-Croat Coalition Forces". Ljubomir Obradović, T. 12000–12001 (29 March 2011); Ex. P01214, pp. 2–3. Savčić confirmed that it was the role of intelligence security organs to draft item 1 of Directive 7. Milomir Savčić, T. 15935–15936 (23 June 2011). *See also* Petar Salapura, T. 13497 (2 May 2011). The Accused argues that there is no reliable evidence as to how the tasks of the Drina Corps were formulated in Directive 7. Accused Final Brief, para. 381. *See also* Accused Closing Argument T. 19466–19467 (22 August 2012). The Chamber finds that there is no evidence as to who specifically drafted each task. Speaking theoretically, Savčić testified that "[i]t is only logical that assistant commanders should have an idea of the whole plan". Milomir Savčić, T. 15970 (23 June 2011). *See also* Ljubomir Obradović, T. 12047–12048 (30 March 2011) (testifying that "[a]ssistant commanders and chiefs of sectors should [have been] copied with the directive because they should be aware of its contents").

678 Ex. P01214, pp. 2–3.

679 Ex. P01214, pp. 3–7.

680 Ex. P01214, pp. 7–14.

681 Ex. P01214, p. 10; Richard Butler, T. 16479–16480 (12 July 2011); Adjudicated Fact 61.

682 Ex. P01214, p. 10; Richard Butler, T. 16480 (12 July 2011); Adjudicated Fact 62.

683 Ex. P01214, p. 14; Richard Butler, T. 16483–16485 (12 July 2011). *See also* Ljubomir Obradović, T. 12013–12015 (30 March 2011).

684 Ex. P01214, p. 11; Richard Butler, T. 16481 (12 July 2011). This had been an objective of the RS government and military for more than two years before March 1995. Milenko Lazić, Ex. P02733, PT. 21825 (5 June 2008).

189. The objectives of Directive 7 were executed through "Operative 7", issued by Drina Corps Commander Živanović to subordinate units on 20 March 1995,[685] ordering:

> [C]omplete physical separation of Srebrenica from Žepa should be carried out as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought-out combat operations create an unbearable situation of total insecurity with no hope of survival or life for the inhabitants of Srebrenica and Žepa.[686]

190. Directive 7 was further implemented in Spreča-95[687] and subsequent orders of the VRS.[688]

(b) Directive 7/1

191. Following the issuance of Directive 7, on 31 March 1995, Mladić issued the Directive For Further Operations, Operative No. 7/1 ("Directive 7/1"),[689] which the Majority finds, with Judge Nyambe dissenting, was intended to amplify and supplement Directive 7 by providing more specific military tasks for individual corps, including the Drina Corps.[690] The language of Directive 7/1, however, did not include reference to "[creating] an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of both enclaves".[691]

192. Directive 7/1 ordered the realisation of "Sadejstvo-95" in response to the ABiH's "wanton violation" of the COHA.[692] Its basic objectives were "inflicting the heaviest possible losses on the

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685 Ex. P02719; Milenko Lazić, Ex. P02733, PT. 21811 (5 June 2008). The corps tasks were copied word for word from the Directive 7. Milenko Lazić, Ex. P02733, PT. 21852–21853 (5 June 2008); Ex. P02719, p. 6. Similar language in Operative 7 is also found in a Bratunac Brigade report issued on 4 July 1994. Milenko Lazić, Ex. P02733, PT. 21852 (5 June 2008); Ex. P02158, p. 3 ("We must continue to arm, train, discipline, and prepare the RS army for the execution of this crucial task, the expulsion of Muslims from the Srebrenica enclave. There will be no retreat. When it comes to the Srebrenica enclave, we must advance. The enemy's life has to be made unbearable and their temporary stay in the enclave impossible so that they leave the enclave en masse as soon as possible, realising that they cannot survive there."). *See also* Richard Butler, T. 16468–16470 (12 July 2011).

686 Ex. P02719, p. 6; Milenko Lazić, Ex. P02733, PT. 21796, 21811 (5 June 2008).

687 Novica Simić, Ex. P02756, PT. 28518 (19 November 2008); Ex. P01214, p. 10; Ex. P02763; Ex. P02766. The carrying out of the operation started even before the receipt of Directive 7 and the actual order. Novica Simić, Ex. P02756, PT. 28517–28518 (19 November 2008), PT. 28696 (24 November 2008). While originally planned by the Eastern Bosnia Corps, the command of the operation was eventually taken over by the Main Staff. Novica Simić, Ex. P02756, PT. 28528 (20 November 2008), PT. 28700 (24 November 2008). The main objective was to disable the ABiH forces that were attacking the relay station on the top of Mount Majevica. Novica Simić, Ex. P02756, PT. 28507 (19 November 2008), PT. 28542–28543 (20 November 2008); Ex. P02764; Ex. P02772. POWs were to be escorted to the Batković Collection Centre a part of Spreča-95. Novica Simić, Ex. P02756, PT. 28692–28694 (24 November 2008); Ex. P02755, p. 5.

688 *See infra* paras. 207, 215–218.

689 Ex. P01199.

690 Richard Butler, T. 16478–16479, 16485 (12 July 2011). *See also* Mirko Trivić, Ex. P01197, PT. 11929–11930 (22 May 2007); Adjudicated Fact 66. The Accused's position is that Directive 7/1 is not supplementary but, instead, replaces Directive 7; the Chamber addresses this argument further in later findings of this Judgement. *See infra* para. 1012.

691 *See* Ex. P01199. *See also* Richard Butler, T. 16485–16486 (12 July 2011), T. 17269–17276 (25 August 2011). According to Butler, Directive 7/1 does not use the language of Directive 7—relating to making life unbearable in the enclave—because "some of the broader tasks don't lend themselves to military orders". Richard Butler, T. 16486 (12 July 2011).

692 Ex. P01199, p. 2. *See also* Novica Simić, Ex. P02756, PT. 28505–28507 (19 November 2008) (stating that as Sadejstvo-95 was a strategic operation it would be "conducted with strategic forces and with a strategic objective, and it is led by a strategic command, in this case, the Main Staff or the Supreme Command"); Ex. P01214, p. 10

enemy, restoring the reputation of the VRS among the people and in the world, and forcing the enemy to negotiate and end the war at the achieved lines through successful actions by VRS forces along chosen axes".[693] Sadejstvo-95, while planned, was never actually carried out.[694]

3. Convoy Restrictions and Deteriorating Humanitarian Situation

(a) Formation of the State Committee for Cooperation

193. Shortly after the issuance of Directive 7, on 14 March 1995, a decision issued by Karadžić was published in the Official Gazette announcing the formation of a State Committee for Cooperation with the United Nations and International Humanitarian Organisations ("State Committee").[695] The decision established the Vice President of the RS, Nikola Koljević, as the President of the State Committee and Colonel Miloš Đurđić as the coordinator for the State Committee's relations with the Ministry of Defence and the VRS.[696] From this point onward, there were to be separate processes for convoy approvals based on whether they concerned UNPROFOR re-supply convoys or humanitarian convoys.[697] The VRS Main Staff was to retain control of processing authorisations for UNPROFOR re-supply convoys,[698] while the State Committee was to issue permits for humanitarian goods convoys.[699] Despite changes in the approval process, the VRS retained control of ensuring safe passage for these convoys and performing checks of the goods

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(Directive 7 also states that "all necessary preparations and planning for the strategic operation *Sadejstvo-95* should be carried out by mid-March").

693 Ex. P01199, p. 3.

694 Novica Simić, Ex. P02756, PT. 28506–28507, 28514–28515 (19 November 2008); Ex. P02754 (explaining that the actions were not carried out due to events unfolding in other parts of BiH); Petar Salapura, T. 13510–13516 (2 May 2011); Ex. P02196; Ex. P02197 (explaining that the actions were not carried out due to lack of forces).

695 Ex. P00689.

696 Ex. P00689, p. 3. As coordinator, Đurđić's responsibility was to provide information to commanders about convoy requests and represent the interests of the VRS in the State Committee. Slavko Kralj, T. 18436–18437 (25 January 2012), T. 18451–18452 (26 January 2012).

697 Slavko Kralj, T. 18379–18380, 18435 (25 January 2012). UNPROFOR convoys were armed convoys that only supplied UNPROFOR units, while humanitarian convoys were convoys from the International Committee of the Red Cross ("ICRC"), UNHCR, MSF, or any other organisations that carried supplies for the civilian population. Richard Butler, T. 17121 (23 August 2011); Slavko Kralj, T. 18373 (24 January 2012), T. 18378 (25 January 2012); Manojlo Milovanović, T. 14337–14338 (19 May 2011); Momir Nikolić, T. 12318–12319 (5 April 2011); Cornelis Nicolai, T. 4015 (17 August 2010). Up until at least mid-1994, the VRS Main Staff issued approvals for all convoys, with the Accused receiving and processing requests coming from UNPROFOR Command. Manojlo Milovanović, T. 14210–14211 (17 May 2011). *See also* Slavko Kralj, T. 18376–18377, 18391 (25 January 2012), T. 18457 (26 January 2012); Ex. D00303.

698 The process for the authorisation used is contained in the 31 January 1995 agreement on the Principles of Freedom of Movement, signed by the Accused, on behalf of the VRS, and Brigadier General J. W. Brinkman, on behalf of UNPROFOR. Ex. D00077; Slavko Kralj, T. 18278–18280 (23 January 2012); Richard Butler, T. 17131–17134 (23 August 2011). This agreement was intended by the Joint Central Commission to further detail Article 5 of the COHA. Slavko Kralj, T. 18280 (23 January 2012); Richard Butler, T. 17132, 17140 (23 August 2011); Ex. D00250. *See also* Ex. P01011, pp. 1–2. *See supra* para. 183.

699 Ex. P00689, p. 2; Slavko Kralj, T. 18379, 18435 (25 January 2012), T. 18450–18451, 18453 (26 January 2012).

transported.[700] Throughout 1995, the final decision for the passage of any convoy remained "in the hands of the army, Mladić, at check-points".[701]

(b) Convoy Approval Process

194. Requests for approval of UNPROFOR convoys were faxed to the VRS Main Staff Department for Civil Affairs offices in Pale indicating the number of vehicles, the route to be driven, and the contents of the convoy.[702] There, the request would be processed and marked with initial notes by Đurđić and forwarded to the Commander, Mladić, for approval.[703] Either Mladić or Milovanović would review the request and sometimes sought input from the Accused or Gvero.[704] Such requests for input are evident in the handwritten notations on several documents asking for advice from "Gvero" and "Tošo", the latter being the nickname of the Accused.[705] Several convoy requests bear the Accused's initials with the word "ne", signifying a disapproval of a particular convoy supply and/or destination.[706] Milovanović explained that whenever he would receive a convoy request from UNPROFOR, he would consult the Accused as "[...] in a way, [the Accused was] the Main Staff liaison with UNPROFOR".[707] Likewise, if Milovanović was unavailable,

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700 Manojlo Milovanović, T. 14336–14340 (19 May 2011); Ex. P00689, p. 3; Slavko Kralj, T. 18384–18385 (25 January 2012), T. 18453–18454 (26 January 2012).

701 Manojlo Milovanović, T. 14213 (17 May 2011). *See also* Richard Butler, T. 16492 (12 July 2011), T. 17242–17245 (25 August 2011). In early March 1995, Smith assessed that "Mladić was very much in charge" of the flow of supplies to the enclaves. Rupert Smith, Ex. P02086, PT. 17482–17483 (5 November 2007). *See* Ex. P02091, pp. 1–2.

702 Cornelis Nicolai, Ex. P00674, PT. 18452–18453 (29 November 2007); Pieter Boering, Ex. P01461, PT. 1894 (19 September 2006); Eelco Koster, Ex. P01483, PT. 3033 (26 October 2006); Slavko Kralj, T. 18279–18280 (23 January 2012), T. 18379 (25 January 2012); Richard Butler, T. 16488–16489 (12 July 2011); Ljubomir Obradović, T. 12022 (30 March 2011). DutchBat requests were made through their chain of command to Sarajevo and then on to a major logistics base in Zagreb. Robert Franken, Ex. P00598, PT. 2442–2443 (16 October 2006), PT. 2637 (18 October 2006).

703 Ljubomir Obradović, T. 12022 (30 March 2011); Slavko Kralj, T. 18280 (23 January 2012), T. 18420 (25 January 2012).

704 Slavko Kralj, T. 18421–18423 (25 January 2012); Manojlo Milovanović, T. 14212–14213 (17 May 2011), T. 14291 (18 May 2011).

705 Ljubomir Obradović, T. 12031–12037 (30 March 2011); Manojlo Milovanović, T. 14291 (18 May 2011). *See, e.g.*, Ex. P02148; Ex. P02149, p. 2; Ex. D00253; Ex. P02233, pp. 80, 82 (handwritten note on BCS pp. 44, 46). *See also* Slavko Kralj, T. 18498–18499 (26 January 2012). Some documents illustrate an initial denial by Mladić, but were ultimately approved after the Accused's input. Slavko Kralj, T. 18423–18424 (25 January 2012). *See, e.g.*, Ex. D00329; Ex. D00330.

706 *See* Ex. P02233 (an OTP Information Report with a compilation of VRS documents relating to UN convoy requests, marked by Milovanović during a meeting where he identified the initials and signatures marked on the documents—his own marked with a "M.M.", Mladić with "R.M.", the Accused with "Z.T.", and Miloš Đurđić as "M.Dj."; the Chamber notes the words "ne" marked with the initial of the Accused on the following pages: 7–17, 27, 55, 57, 101, 110); Manojlo Milovanović, T. 14287–14297 (18 May 2011); Ljubomir Obradović, T. 12024–12027, 12031–12037 (30 March 2011); Richard Butler, T. 16515–16516 (12 July 2011). *See also* Ex. D00253; Ex. P02504–P02507; Ex. P02144 (Obradović marking Ex. P02145 to identify the initials of Mladić and the Accused); Ex. P02146 (Obradović marking Ex. P02145 to identify the initials of Mladić and the Accused); Ex. P02148 (Obradović marking Ex. P02149 to identify a request for input from the Accused). While he understood the initials to be those of the Accused, Butler stipulated that, based on handwriting, he could not conclude who had written the actual comments accompanying these initials. Richard Butler, T. 16517–16518 (12 July 2011).

707 Manojlo Milovanović, T. 14301 (18 May 2011). *See also* Slavko Kralj, T. 18425 (25 January 2012). The Accused had further insight into convoy requests by virtue of his role in the Central Joint Commission, which discussed what types of goods could be shipped and quantities thereof. Slavko Kralj, T. 18421 (25 January 2012).

Đurđić would consult the Accused.[708] Mladić, however, had the final say on all UNPROFOR requests.[709] For humanitarian convoys, the State Committee would issue the actual permits, but the VRS had an influence in the decision-making process and received information on all incoming requests through Đurđić.[710]

195. When permission was granted by the VRS for UNPROFOR convoys, the Department of Civil Affairs would convey the approval to UNPROFOR.[711] At the same time, the VRS Main Staff issued detailed instructions for any approved convoy—UNPROFOR or humanitarian—to the units and checkpoints on RS territory involved in monitoring the routes to be travelled by the convoys.[712] The VRS kept detailed information about what supplies were requested, passed through the checkpoints, and were available in the enclaves.[713]

(c) Convoy Restrictions

196. As early as 1993, the VRS had standing orders to prevent the passage of unauthorised convoys or movements;[714] however, after March 1995, the restrictions increased and fewer and fewer convoys made it to the eastern enclaves of Srebrenica, Žepa, and Goražde.[715] Frequently,

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708 Slavko Kralj, T. 18446–18448 (26 January 2012); Ex. P02859.

709 Manojlo Milovanović, T. 14212–14213 (17 May 2011).

710 Slavko Kralj, T. 18398–18399 (25 January 2012), T. 18451–18454 (26 January 2012); Richard Butler, T. 16492 (12 July 2011), T. 17161–17162 (23 August 2011), T. 17245–17249 (24 August 2011), T. 17455 (31 August 2011); Ex. D00308. Butler testified that Koljević, as Vice President of the RS, would have been one of the individuals who would have seen Directive 7 and would have been familiar with the goals set out. Richard Butler, T. 17455–17456 (31 August 2011).

711 Slavko Kralj, T. 18280, 18302 (23 January 2012); Richard Butler, T. 16489 (12 July 2011). *See, e.g.,* Ex. D00327. *See also* Robert Franken, Ex. P00598, PT. 2444 (16 October 2006). The authorisation would ordinarily arrive just before the convoy was due to leave and additional restrictions sometimes came only after permission was granted. Cornelis Nicolai, Ex. P00674, PT. 18453 (29 November 2007); Cornelis Nicolai, T. 4014 (17 August 2010).

712 Momir Nikolić, T. 12319 (5 April 2011); Ljubomir Obradović, T. 12022, 12051 (30 March 2011); PW-057, T. 15653–15654, 15607 (closed session) (16 June 2011); Slavko Kralj, T. 18280 (23 January 2012), T. 18389 (25 January 2012), T. 18454–18455 (26 January 2012); Richard Butler, T. 16489 (12 July 2011). Numerous exhibits demonstrate the process of informing subordinate units and checkpoints of what had been authorised to pass and what items had been restricted, including, *inter alia*: food, fuel, building supplies, school supplies, and medical supplies. *See, e.g.,* Ex. P02150; Ex. P02861; Ex. P02089; Ex. P02503; Ex. P02411; Ex. P02562–P02569; Ex. P02410; Ex. P02571; Richard Butler, T. 16869–16871 (19 July 2011). Some VRS Main Staff documents to subordinate units contain the language "we approve" or "we did not approve" regarding humanitarian convoy requests; Butler said that this indicates the continuing control over all convoys on the ground. Richard Butler, T. 16501 (12 July 2011), T. 17460–17461 (31 August 2011) Ex. P02575, p. 4; Ex. P02860, p. 1.

713 Momir Nikolić, T. 12324–12325 (5 April 2011); Slavko Kralj, T. 18286–18288 (23 January 2012), T. 18392–18395 (25 January 2012), T. 18482–18483 (26 January 2012). *See, e.g.,* Ex. P02212, pp. 3–4, 13–15, 21–23, 29; Ex. D00209. Elaborate intelligence was maintained on all three of the eastern enclaves. Petar Salapura, T. 13815–13816 (5 May 2011). The Sector for Intelligence and Security Affairs, in particular, had an interest in monitoring convoys for supplies that may have been re-directed toward the ABiH. Ljubomir Obradović, T. 12026 (30 March 2011); Richard Butler, T. 16486–16488, 16492–16493, 16515–16517 (12 July 2011). *See, e.g.,* Ex. P02500.

714 *See, e.g.,* Ex. D00337 (9 April 1993 order of Milovanović that there were to be no movements into or through the RS without written notice from the VRS Main Staff); Ex. D00303, p. 2 (31 August 1994 order of Milovanović that there were to be no movements across the line of separation without written notice from the VRS Main Staff); Slavko Kralj, T. 18369–18372 (24 January 2012).

715 Cornelis Nicolai, T. 3861–3862 (12 July 2010); PW-022, Ex. P00097, PT. 3938 (15 November 2006); Johannes Rutten, Ex. P02638, KT. 2105–2106 (5 April 2000); PW-013, T. 9866–9867 (14 February 2011); Adjudicated Fact 49; Johannes Rutten, Ex. P02629, PT. 5230–5232 (7 December 2006). UNPROFOR officers believed that the

requests for convoys were only partially granted, with strict limitations on the number of vehicles and quantities or type of supplies allowed.[716] All movements were subject to VRS checkpoints—manned by brigade MPs with instructions from the VRS Main Staff[717]—where the lists of cargo were checked against the manifest.[718] Security organs also participated in convoy checks.[719] During May and June 1995, convoys were often detained at these checkpoints, blocked en route, or refused entirely.[720]

(d) Impact of the Restrictions

(i) Srebrenica Enclave

197. The Srebrenica enclave was subject to severe convoy restrictions in the months of April–July 1995.[721] In the days leading up to the attack on the Srebrenica enclave, verbal orders to restrict or prevent entry of the convoys sometimes came even after written approvals had been issued.[722] When convoys did arrive, they were often missing much-needed cargo.[723] UNPROFOR began to

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restrictions were an intentional "squeeze" on the eastern enclaves. Rupert Smith, T. 11541–11542 (21 March 2011); Rupert Smith, Ex. P02086, PT. 17472, 17484 (5 November 2007). *See also* Evert Rave, T. 6909 (28 October 2010).

716 Cornelis Nicolai, Ex. P00674, PT. 18452–18453 (29 November 2007).

717 Momir Nikolić, T. 12321–12322, 12324 (5 April 2011); PW-057, T. 15653–15655 (16 June 2011); Zoran Carkić, T. 12811 (14 April 2011).

718 Robert Franken, Ex. P00598, PT. 2444 (16 October 2006); Richard Butler, T. 17130–17131, 17143 (23 August 2011); Milorad Birčaković, T. 9187–9188 (1 February 2011); Momir Nikolić, T. 12319–12320 (5 April 2011); Johannes Rutten, Ex. P02638, KT. 2173 (5 April 2000). Since many materials disappeared en route, a corrected cargo list would be delivered when the convoy arrived in the enclave. Robert Franken, Ex. P00598, PT. 2444–2445 (16 October 2006).

719 *See* Ex. P02162 (a document from the Main Staff dated 2 April 1995, sent to the commands of the Drina, Sarajevo-Romanija, and Eastern Bosnia Corps, with a handwritten note stating that "[n]ot a single" convoy, ICRC, or MSF team may enter Srebrenica without "my permission and presence" followed by Momir Nikolić's signature); Ex. P02164 (a convoy approval from the Main Staff dated 15 June 1995 stating that security officers must witness detailed controls, meaning that an officer from the security organ was required to be present at every inspection); Ex. P02165 (a convoy approval with a handwritten note from Momir Nikolić requiring "examination of convoy in the presence of the chief of security of the 1st Bratunac Light Infantry Brigade").

720 Cornelis Nicolai, Ex. P00674, PT. 18454, 18456–18457 (29 November 2007); Momir Nikolić, T. 12322 (5 April 2011); Cornelis Nicolai, T. 3861 (12 July 2010). *See also* Rupert Smith, Ex. P02086, PT. 17816 (9 November 2007). UNHCR convoys sometimes turned back from the checkpoint due to VRS demands or other reasons. Robert Franken, Ex. P00598, PT. 2691–2692 (18 October 2006); Robert Franken, T. 3563 (6 July 2010). *See also* Slavko Kralj, T. 18281–18282 (23 January 2012). DutchBat referred to the VRS restrictions as "convoy terror". Robert Franken, T. 3521, 3526 (6 July 2010); Robert Franken, Ex. P00598, PT. 2450 (16 October 2006).

721 Johannes Rutten, Ex. P02629, PT. 4807–4808 (29 November 2006); Eelco Koster, Ex. P01483, PT. 3035 (26 October 2006); Momir Nikolić, T. 12323–12324, 12345–12346 (5 April 2011). Momir Nikolić testified to a number of VRS documents that illustrate convoy restrictions in place after March 1995. Momir Nikolić, T. 12332–12334, 12336–12338, 12342 (5 April 2011), T. 12363–12364, 12433–12436 (6 April 2011). *See, e.g.*, Ex. P02162–P02166; Ex. P02167, p. 17; Ex. P02168.

722 Momir Nikolić, T. 12321–12322, 12324 (5 April 2011).

723 Ex. P02501, p. 2; Ex. P02502, p. 2; Richard Butler, T. 16497–16499 (12 July 2011); PW-073, T. 643 (12 March 2010); Ex. P00992, p. 4; Joseph Kingori, T. 5473, 5480–5481 (16 September 2010). Some supplies and foodstuffs were separated out for the ABiH from the humanitarian aid coming into the enclaves, a practice known to the VRS. Ex. D00080; Richard Butler, T. 17214 (24 August 2011); Slavko Kralj, T. 18292–18295, 18299 (23 January 2012); PW-071, T. 6259 (closed session) (6 October 2010); PW-022, Ex. P00097, PT. 4042 (16 November 2006); Ex. D00073, pp. 2–3. *See also* Robert Franken, Ex. P00598, PT. 2538 (17 October 2006), PT. 2642 (18 October 2006); Joseph Kingori, Ex. P00950, PT. 19387 (10 January 2008); Joseph Kingori,

run low on supplies,[724] and all living in the enclave lacked food, medicine, electrical power, and water.[725] The growing shortages led to increases in smuggling and an active black market.[726]

198. While humanitarian aid had been arriving since just after the establishment of the safe areas in 1993,[727] UNMO Officer Kingori testified that "there was never enough food in Srebrenica, never".[728] As food stocks dwindled further into 1995, unpredictable access to food instilled fear among the population.[729] Many Bosnian Muslims in the Srebrenica enclave were forced to beg for food[730] and some resorted to searching the DutchBat garbage dumps.[731] Many travelled over a dangerous, mined road to find food in Žepa.[732] Some people also foraged in the surrounding forests for food.[733]

199. In addition to lack of food, there was a shortage of the most essential supplies and staffing for the hospital in Srebrenica.[734] While DutchBat provided medical assistance to some of the local population in the Srebrenica enclave,[735] there were several periods that they had to stop providing

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T. 5479–5480 (16 September 2010). UNPROFOR believed some of the missing goods were due to "a failure of organisation" at the point of origin. Rupert Smith, Ex. P02086, PT. 17817–17818 (9 November 2007).

724 Pieter Boering, Ex. P01461, PT. 1893 (19 September 2006); Cornelis Nicolai, T. 3858 (12 July 2010); Ex. P00711, p. 4; Adjudicated Fact 52. These problems with convoys and supplies intended for the enclaves were consistently reported to UNPF Headquarters and ultimately reported to UN Headquarters in New York. Cornelis Nicolai, T. 3863, 3870–3871 (12 July 2010). *See, e.g.,* Ex. P00714; Ex. P00715, p. 2; Ex. P02111, pp. 2–6.

725 Pieter Boering, Ex. P01461, PT. 1891–1893 (19 September 2006); Johannes Rutten, Ex. P02629, PT. 5234 (7 December 2006); Momir Nikolić, T. 12327–12328 (5 April 2011); PW-071, T. 6038–6039 (closed session) (30 September 2010); PW-022, Ex. P00097, PT. 3938 (15 November 2006); PW-022, T. 1127–1128, 1161 (14 April 2010); Adjudicated Fact 52.

726 *See, e.g.,* Robert Franken, T. 3536–3537, 3544 (6 July 2010); Joseph Kingori, T. 5466 (15 September 2010); Joseph Kingori, Ex. P00950, PT. 19195–19197 (13 December 2007); Pieter Boering, Ex. P01461, PT. 1891 (19 September 2006); PW-071, T. 6249, 6255–6256 (closed session) (6 October 2010); Rupert Smith, Ex. P02086, PT. 17704–17706 (8 November 2007); Zoran Čarkić, T. 12810–12811 (14 April 2011); Ex. P00620; Ex. P00595, p. 4.

727 PW-022, Ex. P00097, PT. 3933 (15 November 2006); Meho Džebo, T. 14794 (30 May 2011).

728 Joseph Kingori, Ex. P00950, PT. 19196 (13 December 2007). *See also* Pieter Boering, Ex. P01461, PT. 1891 (19 September 2006); Johannes Rutten, Ex. P02638, KT. 2106 (5 April 2000); Ex. P00710, p. 3 (showing the amounts of food required in the enclaves and the decreasing amounts delivered). Food deliveries in March and April 1995 were insufficient and after April there was no fresh food delivered to the Srebrenica enclave. Cornelis Nicolai, T. 3855–3857 (12 July 2010); Ex. P00710, pp. 1, 3. *See also* Eelco Koster, Ex. P01483, PT. 3035 (26 October 2006). It was estimated that, without replenished supplies, by mid-June, nearly half of the Srebrenica population would be without food. Adjudicated Fact 53.

729 PW-071, T. 6038–6039 (closed session) (30 September 2010). PW-071 stated that the restrictions, especially over several years, created "a form of psychological pressure on the people in Srebrenica to make people want to leave". PW-071, T. 6039–6040 (closed session) (30 September 2010).

730 PW-012, Ex. P01518, PT. 3305 (31 October 2006); PW-022, Ex. P00097, PT. 3938 (15 November 2006).

731 Johannes Rutten, Ex. P02638, KT. 2106–2107 (5 April 2000); Ex. P02643 (photograph taken by Rutten showing local persons searching for something edible amongst the garbage that was dumped).

732 PW-022, Ex. P00097, PT. 3938 (15 November 2006); PW-022, T. 1161 (14 April 2010); PW-073, Ex. P00048 (confidential), pp. 4–5; PW-073, T. 616–617, 641–642 (12 March 2010); PW-013, T. 9866–9867 (14 February 2011).

733 PW-022, T. 1127–1128 (14 April 2010). *See also* PW-071, T. 6039 (closed session) (30 September 2010).

734 PW-022, Ex. P00097, PT. 3941–3942 (15 November 2006); Pieter Boering, Ex. P01461, PT. 1892 (19 September 2006). *See also* PW-022, Ex. P00096 (confidential), PT. 4004–4005 (private session) (16 November 2006).

735 Rupert Smith, Ex. P02086, PT. 17659–17661 (7 November 2007).

such medical care due to lack of supplies or functional equipment.[736] By early March 1995, UNHCR reported a shortage of the basic rations being brought into the enclave, including a reported shortfall of basic medical supplies.[737]

200. Fuel supplies were equally compromised; after a re-supply convoy in late February or early March 1995, no further fuel convoys were permitted into the Srebrenica enclave until June.[738] The fuel shortage in the months leading up to July was so extreme that DutchBat could not carry out motorised patrols[739] and resorted to the use of donkeys[740] or patrolled the enclave on foot.[741] Low fuel supplies further compromised UNPROFOR's ability to cook food, operate its medical station, and purify drinking water.[742] After some time, DutchBat also stopped using fuel to heat the buildings.[743]

201. In 1995, the VRS would also categorically deny requests to re-supply ammunition, spare parts for vehicles, and communication radios to DutchBat.[744] As a result, DutchBat was insufficiently armed.[745] Franken testified that the operational readiness of the battalion's weapon systems was "zero".[746] By early June 1995, DutchBat had reached a point where it was

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736 Robert Franken, Ex. P00598, PT. 2643–2644 (18 October 2006); Cornelis Nicolai, T. 3866 (12 July 2010); Ex. P02577; Ex. P00620, pp. 2–3.

737 Rupert Smith, Ex. P02086, PT. 17479–17481 (5 November 2007).

738 Eelco Koster, Ex. P01483, PT. 3034–3035 (26 October 2006); Robert Franken, Ex. P00598, PT. 2445 (16 October 2006); Cornelis Nicolai, Ex. P00674, PT. 18456 (29 November 2007). *See also* PW-071, T. 6041 (closed session) (30 September 2010).

739 Richard Butler, T. 16484 (12 July 2011). *See, e.g.,* Ex. P00710, p. 2. DutchBat needed 8,000–9,000 litres of fuel each day in order to carry out its patrols, but was forced to ration its use to 250 litres each day, precluding the battalion from patrolling in vehicles. Robert Franken, Ex. P00598, PT. 2447 (16 October 2006), PT. 2658 (18 October 2006); Robert Franken, T. 3542–3543 (6 July 2010). In the Srebrenica enclave, while UNPROFOR was able to get some fuel from UNHCR, even UNHCR's and MSF"s fuel supplies were used up in March and April 1995. Cornelis Nicolai, T. 3863–3864 (12 July 2010), T. 4021–4022 (17 August 2010). Eelco Koster, Ex. P01483, PT. 3097 (26 October 2006); Robert Franken, Ex. P00598, PT. 2639, 2658 (18 October 2006). *See also* Momir Nikolić, T. 12325 (5 April 2011).

740 Johannes Rutten, T. 17837 (12 September 2011).

741 Cornelis Nicolai, T. 3855 (12 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18459 (29 November 2007); Vincent Egbers, Ex. P01142, PT. 2860 (20 October 2006); Adjudicated Fact 54.

742 Robert Franken, Ex. P00598, PT. 2447 (16 October 2006); Robert Franken, Ex. P00598, PT. 2643 (18 October 2006); Robert Franken, T. 3542–3543 (6 July 2010). *See also* Cornelis Nicolai, T. 3863 (12 July 2010); Ex. P00713, p. 3.

743 Cornelis Nicolai, Ex. P00674, PT. 18459 (29 November 2007).

744 Robert Franken, Ex. P00598, PT. 2443–2444 (16 October 2006); Eelco Koster, Ex. P01483, PT. 3033–3034 (26 October 2006); Cornelis Nicolai, T. 3872 (12 July 2010). Several witnesses have testified that an embargo on the import of weapons and ammunition was in place due to RS concerns that these items, as well as fuel, were being supplied to the ABiH. *See, e.g.,* Slavko Kralj, T. 18281 (23 January 2012) (an embargo on the import of weapons and ammunition was in place due to RS concerns); Manojlo Milovanović, T. 14342 (19 May 2011). There is evidence that the ABiH did receive some of these items from convoys in the period of 1993–1995. Ex. D00078; Ex. D00198; Ex. D00199; Ex. D00214; Ex. P02126; Richard Butler, T. 17201–17205 (24 August 2011).

745 Johannes Rutten, Ex. P02629, PT. 5235, 5237–5238 (7 December 2006). DutchBat was already woefully stocked at the beginning of 1995. Robert Franken, T. 3524–3525 (6 July 2010); Robert Franken, Ex. P00598, PT. 2666 (18 October 2006); Rupert Smith, Ex. P02086, PT. 17480–17481 (5 November 2007).

746 Robert Franken, Ex. P00598, PT. 2447–2449 (16 October 2006).

operationally no longer able to fulfil its mission, execute any actions, or "respond on forthcoming deteriorating situations".[747]

(ii) Žepa Enclave

202. Food reserves in the Žepa enclave were sustained much later into 1995,[748] but supplies diminished dramatically when the food convoys were stopped approximately one month before the offensive.[749] Lack of fuel was an ongoing problem in the enclave of Žepa,[750] which further contributed to a lack of fresh food as UNPROFOR was unable to run the generators for the refrigeration systems.[751] As the situation grew more dire, some Bosnian Muslims were seeking ways to leave Žepa.[752]

(e) Looming Humanitarian Crisis

203. The restrictions on convoys not only reduced the combat readiness of UNPROFOR, but also had an adverse impact on the humanitarian situation within the enclaves.[753] From March 1995 up until the fall of the enclaves, UNPROFOR met with the VRS and RS political leadership—namely Karadžić, Mladić, Koljević, and the Accused[754]—and repeatedly complained about the increasing problems caused by the lack of goods.[755]

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747 Ex. P00620; Cornelis Nicolai, T. 3864–3867 (12 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18459 (29 November 2007); Robert Franken, Ex. P00598, PT. 2455 (16 October 2006). *See also* Vincent Egbers, Ex. P01142, PT. 2904 (20 October 2006); Cornelis Nicolai, Ex. P00674, PT. 18531 (30 November 2007). In May 1995, Karremans sent an initial report that the inability to re-supply had seriously compromised DutchBat's operational usefulness. Cornelis Nicolai, Ex. P00674, PT. 18459 (29 November 2007).

748 Meho Džebo, T. 14793–14794 (30 May 2011). *See also* PW-022, Ex. P00097, PT. 3938, 4041 (15 November 2006); PW-022, T. 1128–1129 (14 April 2010); PW-013, T. 9865 (14 February 2011); Zoran Čarkić, T. 12810, 12858–12859 (14 April 2011); Ex. D00212.

749 Meho Džebo, T. 14794 (30 May 2011); Cornelis Nicolai, T. 3860–3862 (12 July 2010); Ex. P00712, p. 1 (indicating that the food supplies were critical in the Goražde enclave). *See also* Ex. P00580, p. 5.

750 Ex. P00716, p. 5 (an UNPROFOR report dated 24 June 1995 stating that no fuel convoy had arrived in Žepa for the last 16 weeks); Cornelis Nicolai, T. 3874 (12 July 2010); Robert Franken, T. 3544 (6 July 2010); Hamdija Torlak, T. 4494 (26 August 2010). VRS confiscated fuel from convoys entering Žepa. Ex. P02570.

751 Ex. P00713, p. 3; Cornelis Nicolai, T. 3863 (12 July 2010). In April 1995, UKRCoy was using wood for cooking and candles for light. Ex. P00710, p. 2.

752 Hamdija Torlak, T. 4602–4606 (30 August 2010); Ex. D00099. The ABiH sought to restrict such movements out of the Žepa enclave. Hamdija Torlak, T. 4606–4608 (30 August 2010); Ex. D00100.

753 Momir Nikolić, T. 12326–12328 (5 April 2011); Richard Butler, T. 16484–16485 (12 July 2011).

754 The Accused would frequently attend these meetings with Mladić. Rupert Smith, Ex. P02086, PT. 17476 (5 November 2007). *See, e.g.*, Ex. P01430, p. 1.

755 Rupert Smith, Ex. P02086, PT. 17474–17478, 17481, 17485, 17488, 17492–17493, 17495–17496, 17499–17500, 17505 (5 November 2007), PT. 17630–17631 (7 November 2007); Ex. D00193, p. 5. *See, e.g.*, Ex. P01430, p. 1 (6 March 1995: meeting with Mladić in Jahorina with the Accused and Koljević as follow-up to Smith's phone call to Mladić the previous day requesting re-supply of DutchBat forces in the Srebrenica enclave; Mladić threatened a blockade of all enclaves if sanctions were not lifted); Ex. P02091 (7 March 1995: meeting with Mladić in which he repeated that the enclaves were a "nuisance" and that he would "prevent them from being a problem"; Mladić threatened to restrict food and supplies to the enclaves to which Smith told him that such actions would be seen by the international community as an attack on the enclaves); Ex. P02092, p. 1 (5 April 1995: meeting with Karadžić and Zametica; Karadžić expressed the general view that UNPROFOR was supplying the "Bosnian defenders" and that he would not facilitate the movement of humanitarian aid while the Bosnian Serbs

204. By early July 1995, there were an estimated 42,000 persons inside the Srebrenica enclave and approximately 6,500 to 10,000 people in the Žepa enclave.[756] With no food, no water, and few medical supplies, a devastating humanitarian situation engulfed these enclaves.[757]

4. Continuing Military Attacks

(a) Cease-fire breakdown: "The beginning of the end"

205. Parallel to a deteriorating humanitarian situation, by early April 1995, the cease-fire had broken down and the situation was, according to Smith, "the beginning of the end".[758] At a meeting between UNPROFOR and Karadžić on 5 April 1995, Karadžić stated that the decision had been taken to begin a counter-offensive.[759] As April advanced, both warring sides were reluctant to extend the original COHA.[760]

206. In April and May 1995, the VRS increased targeting of UN personnel and UNPROFOR's abilities were hampered by the denial of supplies and movement to the eastern enclaves.[761] With the situation steadily deteriorating, threats of air-strikes by NATO were issued to both the VRS[762] and the ABiH[763] at meetings in early May.

207. On 15 May 1995, the then-Deputy Drina Corps Commander Radislav Krstić issued the "Order to Stabilise Defence around Žepa and Srebrenica Enclaves and Establish Conditions for the

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were under blockade); Ex. P02093, p. 3 (20 April 1995: meeting with Koljević, Krajišnik, and Gvero; Gvero indicated that they were tracking UNPROFOR's fuel usage and accused them of supplying fuel to the ABiH in the Srebrenica enclave); Ex. P02094, p. 3 (30 April 1995: meeting with Karadžić, Koljević, Krajišnik, Buha, and the Accused; Karadžić said they regarded humanitarian and UNPROFOR convoys as commercial convoys for the Bosnian Muslims putting the Bosnian Serbs under "double restrictions, sanctions", therefore, UNPROFOR could expect more restrictions); Ex. P02110, pp. 1–2 (9 May 1995: meeting with Karadžić where he confirmed that the VRS had put the UN under sanctions; Smith told Karadžić that the fuel matter "was now so grave that the issue 'would soon be out of his hands'); Ex. P00742, p. 1 (21 May 1995: meeting with Karadžić; Smith again explained the debilitating effect of the denial of supplies and movement to the eastern enclaves). Warnings were also issued to the corps levels by DutchBat. Pieter Boering, Ex. P01461, PT. 1898–1899 (19 September 2006).

[756] Ex. P00966, p. 1; Ex. P00992, p. 4; Joseph Kingori, T. 5455–5456 (15 September 2010). *See infra* para. 599.

[757] Robert Franken, T. 3568–3569 (6 July 2010); Richard Butler, T. 17468–17469 (31 August 2011). *See also* Ex. P00966; Ex. P00620, p. 2; Ex. P02579, p. 2; D00122, p. 56; Adjudicated Fact 64.

[758] Rupert Smith, Ex. P02086, PT. 17489–17490 (5 November 2007).

[759] Ex. P02092, p. 2. *See also* Rupert Smith, Ex. P02086, PT. 17489 (5 November 2007). At that time, DutchBat noticed a build-up of Bosnian Serb Forces in the areas with younger soldiers, complete uniforms, and new rifles. Adjudicated Facts 58, 59.

[760] Ex. P02093, pp. 1–2; Ex. P02094, pp. 1–3; Ex. P02095, pp. 1–2.

[761] Ex. P02093, p. 3; Ex. P00742, p. 1; Rupert Smith, Ex. P02086, PT. 17505–17506 (5 November 2007); Robert Franken, T. 3336 (30 June 2010). *See also* Robert Franken, Ex. P00598, PT. 2440–2441 (16 October 2006); Pieter Boering, Ex. P01461, PT. 1897–1898 (19 September 2006).

[762] Ex. P02110, p. 1 (recounting a meeting of UNPROFOR with Karadžić in which Smith explained that NATO air strikes had been recommended based on 7–8 May 1995 attacks of the Bosnian Serb Forces on civilian areas of Sarajevo); Rupert Smith, Ex. P02086, PT. 17502 (5 November 2007). In response, Karadžić threatened that if NATO was used against the VRS, the UN would be treated as "the enemy". Rupert Smith, Ex. P02086, PT. 17502 (5 November 2007); Ex. P02110, p. 1.

[763] Cornelis Nicolai, T. 3987 (17 August 2010) (discussing a warning issued to the ABiH that they could be the subject of NATO air attacks should they be the ones starting the provocations).

Liberation of the Enclaves" to the subordinate units.[764] In this order, Krstić assessed that the ABiH was planning a series of offensive actions from Tuzla, Kladanj, Kalesija, and the Srebrenica and Žepa enclaves with the goal of dividing the VRS-held territory, connecting the enclaves, and obtaining access to the Drina River.[765] Krstić further noted that the ABiH units were intensifying reconnaissance and sabotage activities in preparation for such actions.[766] The following day, Krstić reported to the VRS Main Staff that the Drina Corps units were continuing with preparations of defence around the Srebrenica and Žepa enclaves, "in accordance with your order", alluding to Directive 7.[767] However, he stated that they were "currently unable to implement your order to fully close off the enclaves" due to insufficient forces.[768]

(b) NATO Air-Strikes and VRS Attacks

208. Due to VRS violations of UN Security Council Resolutions 824 and 836 and other agreements,[769] on 25 and 26 May 1995, NATO air-strikes were carried out at UNPROFOR's request on targets in VRS-held territory.[770] The VRS retaliated by shelling virtually all of the enclaves—including Srebrenica and Žepa—and taking over 300 hostages, including UN personnel.[771] The shelling killed at least one nine-year-old girl in Bučinovići[772] and many others were wounded.[773] The UNPROFOR hostages were taken to potential NATO air-strike locations with the effect of "blackmailing" the UN,[774] which led to a cessation of air-strikes.[775]

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764 Ex. P01217.

765 Ex. P01217, p. 1. *See also* Momir Nikolić, T. 12567–12569 (11 April 2011).

766 Ex. P01217, p. 1. *See also* Momir Nikolić, T. 12567–12569 (11 April 2011).

767 Ex. P02509, p. 1; Richard Butler, T. 16526–16527 (12 July 2011). *See also* Ex. P01218, p. 1. Butler testified that this report relates to Directive 7's call for "physical separation" of the enclaves. Richard Butler, T. 16527–16529 (12 July 2011).

768 Ex. P02509, p. 1; Richard Butler, T. 16526–16527 (12 July 2011). *See also* Ex. P01218, p. 1.

769 Cornelis Nicolai, T. 3914–3915 (13 July 2010), T. 4064 (18 August 2010); Rupert Smith, T. 11547–11548 (21 March 2011), T. 11788 (24 March 2011).

770 Ex. D00020, p. 16; Rupert Smith, T. 11547–11548 (21 March 2011), T. 11809 (24 March 2011); Rupert Smith, Ex. P02086, PT. 17508–17509 (5 November 2007); Cornelis Nicolai, T. 3914–3915 (13 July 2010).

771 Rupert Smith, Ex. P2086, PT. 17509 (5 November 2007); Rupert Smith, T. 11548 (21 March 2011), T. 11915–11917 (28 March 2011); Cornelis Nicolai, T. 3915 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18479, 18492 (29 November 2007); Hamdija Torlak, T. 4286 (23 August 2010), T. 4839 (2 September 2010); Milenko Lazić, Ex. P02733, PT. 21857–21858 (5 June 2008). *See also* Ex. P02729, p. 1 (the VRS "responded accordingly with the activities against the selected targets"); Ex. P02722 (the Bratunac Brigade "opened fire on Srebrenica"); Ex. P02723 (two shells were fired on the town of Srebrenica); Ex. P02140 (VRS Main Staff recommendation that hostages be placed in area of potential NATO strikes); Ex. P02510 (Milovanović's order for the captured UNPROFOR members to be placed at potential NATO target sites); Ex. P02783 (Karadžić's order for release of the captured UNPROFOR members); Ex. P02784 (Mladić's order for release of the captured UNPROFOR members); Ex. P02785 (list of released UNPROFOR members); Adjudicated Fact 69 (The Bratunac Brigade also opened fire on Srebrenica on 25 May 1995.).

772 Alma Gabeljić, Ex. P01520 (24 May 2004), pp. 4, 8 (including Letter B: non-certified death certificate of Jasna Gabeljić); Ex. P00956, p. 2.

773 Alma Gabeljić, Ex. P01520 (24 May 2004), pp. 4, 7 (including Letter A: non-certified medical certificate of Alma Gabeljić). *See also* Hamdija Torlak, T. 4834–4835 (2 September 2010); Ex. P00756.

774 Cornelis Nicolai, T. 3915 (13 July 2010).

775 Cornelis Nicolai, T. 3915 (13 July 2010).

(c) VRS Takeover of the OP "Echo"

209. DutchBat OP "Echo"—located in Zeleni Jadar at the crossroads of the road coming from Srebrenica and the roads leading to Milići and Skelani—was in a position favourable to the VRS.[776] Following ongoing requests to UNPROFOR to move or abandon the post,[777] Drina Corps Commander Živanović issued an order for its takeover.[778] According to plan, on 3 June 1995, approximately 40 VRS soldiers, supported by a tank, attacked and captured OP Echo causing DutchBat to withdraw from the post.[779] Reporting on this incident, DutchBat Commander Thomas Karremans expressed grave concerns for approximately 3,000 Bosnian Muslims who were sheltered near the former OP at the edge of the town of Srebrenica in the Swedish Shelter Project.[780] While the VRS initially denied the attack on the OP, arguing that it did not use any arms,[781] later in July 1995, Živanović acknowledged the "expulsion of UNPROFOR with weapons".[782]

(d) Build-up of Forces and Military Actions

210. In June 1995, the number of VRS troops increased and the Srebrenica enclave was surrounded on all sides by VRS.[783] The ABiH forces increased as well.[784] Increasingly, DutchBat

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776 Momir Nikolić, T. 12348 (5 April 2011); Robert Franken, P00598, PT. 2454–2455 (16 October 2006). *See also* Richard Butler, T. 16535–16537 (12 July 2011); Ex. P02511, p. 1; P02473, pp. 20–21. Nikolić testified that takeover of this OP would allow the VRS to insert forces on that axis and further separates the two enclaves. Momir Nikolić, T. 12353 (5 April 2011).

777 The Drina Corps Command believed that this OP at Zeleni Jadar was outside of the enclave and made requests for it to be moved about 300-400 metres within the Srebrenica enclave. Momir Nikolić, T. 12348–12349 (5 April 2011); Joseph Kingori, Ex. P00950, PT. 19372–19373 (10 January 2008). *See also* Ex. D00206, p. 5.

778 Ex. P00625; Momir Nikolić, T. 12349–12350 (5 April 2011); Richard Butler, T. 16539–16540 (12 July 2011). The Zvornik Brigade was involved in taking the post along with a detachment from the Drina Wolves, commanded by Jolović, a.k.a. "Legenda", and the 3rd Infantry Battalion of the Bratunac Brigade. Momir Nikolić, T. 12351 (5 April 2011). *See also* Ex. P00625.

779 Ex. P02199; Ex. P00620, pp. 3–4; Ex. D00020, pp. 16–17; Ex. D00122, p. 53; Robert Franken, Ex. P00598, PT. 2452–2454 (16 October 2006); Robert Franken, T. 3331–3335 (30 June 2010); Evert Rave, T. 6904–6908 (28 October 2010); Richard Butler, T. 16529, 16540–16543 (12 July 2011); Cornelis Nicolai, T. 3867 (12 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18460 (29 November 2007). *See also* Ex. P02167, p. 3 (analysis of the combat readiness of the Bratunac Brigade in the first half of 1995 stating that "we carried out the Jadar-95 active combat operations from 31 May to 5 June 1995"). Nikolić testified that this reference to "Jadar-95" most likely meant the takeover of OP Echo as this was the only operation in Jadar of which he was aware. Momir Nikolić, T. 12357–12358 (5 April 2011). Two new OPs—"Sierra" and "Uniform"—were subsequently created in that area. Robert Franken, Ex. P00598, PT. 2453–2454 (16 October 2006). *See also* Ex. P00620, p. 2.

780 Ex. P00620, p. 2; Robert Franken, Ex. P00598, PT. 2455 (16 October 2006). *See also* Robert Franken, T. 3337–3338 (30 June 2010); Cornelis Nicolai, T. 3867–3868 (12 July 2010). The Swedish Shelter Project, sometimes referred to as "SSP", was a temporary housing project funded by the Swedish government to provide shelter for up to 4,000 refugees. Pieter Boering, Ex. P01461, PT. 1898 (19 September 2006); Cornelis Nicolai, T. 3868 (12 July 2010); Richard Butler, T. 16506 (12 July 2012). It was located approximately 800 metres west of OP Echo in the south-eastern part of the enclave. Robert Franken, T. 3338 (30 June 2010).

781 Ex. P00620, p. 2; Cornelis Nicolai, T. 3867 (12 July 2010).

782 Ex. P02798, Disc 3, 00:35:32–00:37:33, pp. 58–59.

783 Johannes Rutten, Ex. P02638, KT. 2169–2170 (5 April 2000); Cornelis Nicolai, Ex. P00674, PT. 18460 (29 November 2007).

784 Joseph Kingori, Ex. P00950, PT. 19374 (10 January 2008). As early as May 1995, many more ABiH soldiers appeared in combat uniforms with increased weaponry. Robert Franken, Ex. P00598, PT. 2438 (16 October 2006), PT. 2537 (17 October 2006); PW-002, Ex. P01497, KT. 1491 (28 March 2000); Johannes Rutten, Ex. P02638, KT. 2174 (5 April 2000); Vincent Egbers, Ex. P01142, PT. 2862–2863 (20 October 2006). *See also* Pieter

and UNMOs were restricted in their movements by both the VRS[785] and the ABiH.[786] The ABiH soldiers stationed inside the Srebrenica enclave regularly carried out attacks outside its borders, targeting VRS-held territory.[787] The VRS responded with shelling and sniping the Srebrenica and Žepa enclaves;[788] some of the firing was directed at civilians and civilian objects.[789]

Boering, Ex. P01461, PT. 2038 (22 September 2006), PT. 2170 (26 September 2006); PW-057, T. 15614–15615 (closed session) (16 June 2011).

785 Robert Franken, Ex. P00598, PT. 2441 (16 October 2006); Robert Franken T. 3410–3411 (1 July 2010); Joseph Kingori, Ex. P00950, PT. 19342 (10 January 2008); Adjudicated Facts 45, 56. From March 1995 onward, the VRS began to refuse permissions for DutchBat to return to their station after leave, which considerably compromised the strength of the troops in the Srebrenica enclave and reduced UNPROFOR's effectiveness. Johannes Rutten, Ex. P02629, PT. 5235 (7 December 2006); Cornelis Nicolai, T. 3859–3860 (12 July 2010), T. 3991 (17 August 2010); Cornelis Nicolai, Ex. P00674, PT. 18458 (29 November 2007); Ex. P00707. *See* Richard Butler, T. 16519 (12 July 2011), T. 17462–17463 (31 August 2011); Ex. P02507; Ex. P02569. As a result of VRS refusals, the number of troops in the enclave diminished from about 600–650 soldiers to 147 by the end. Robert Franken, Ex. P00598, PT. 2450 (16 October 2006).

786 Cornelis Nicolai, T. 4085–4087, 4095–4096 (18 August 2010); Robert Franken, Ex. P00598, PT. 2441 (16 October 2006); Richard Butler, T. 17034–17035 (22 August 2011); Ex. P00585, p. 78. The "Bandera Triangle" had been highly restricted from even before January 1995. Robert Franken, T. 3382, 3389–3393 (30 June 2010); Robert Franken, Ex. P00598, PT. 2441 (16 October 2006), PT. 2601–2602 (17 October 2006); Joseph Kingori, Ex. P00950, PT. 19346 (10 January 2008); Vincent Egbers, T. 7202–7204, 7207–7209 (2 November 2010); Pieter Boering, T. 9032 (16 December 2010); Ex. D00066. *See also* Ex. D00065 (marked map indicating the location of the Bandera Triangle). By early July 1995, the ABiH had set up increasing numbers of checkpoints to block and inspect convoys themselves. Cornelis Nicolai, T. 4095–4097 (18 August 2010).

787 Cornelis Nicolai, T. 3876–3877 (12 July 2010); Momir Nikolić, T. 12269 (4 April 2011). *See also* Ex. D00191, p. 1; Ex. D00053; Ex. P02096; Ex. D00062; Ex. D00052; Hamdija Torlak, T. 4593–4599 (30 August 2010); PW-057, T. 15625–15626 (closed session) (16 June 2011); Evert Rave, T. 6794–6795 (26 October 2010); Zoran Ćarkić, T. 12825–12826 (14 April 2011). By the end of May 1995, the weapons collection points were no longer under UNPROFOR supervision. Rupert Smith, T. 11546 (21 March 2011); Louis Fortin, Ex. P00587, PT. 18303, 18306–18307 (27 November 2007). DutchBat had stopped pursuing armed patrols in the enclave neighbourhoods. Robert Franken, T. 3412 (1 July 2010). *See also* Ex. D00020, p. 16.

788 Cornelis Nicolai, T. 3876 (12 July 2010), T. 4072 (18 August 2010); Hamdija Torlak, T. 4285–4286 (23 August 2010); Momir Nikolić, T. 12307–12311, 12316–12318 (5 April 2011), T. 12361 (6 April 2011); Ex. P02159, p. 4 (Drina Corps Command order dated 24 July 1994 requiring all brigade commands to ensure sniper training); Ex. P02160, pp. 1–3 (Bratunac Brigade status report dated 10 July 1994 listing the status of sniping equipment); Ex. P02161 (ABiH document dated 3 July 1995 indicating "fierce sniper fire" coming from the area of responsibility of the Bratunac Brigade battalions); Ex. P02167, p. 7 (Bratunac Brigade document dated 4 July 1995 analysing combat readiness from 1 January 1995 to 30 June 1995 referring to sniper training); Adjudicated Fact 68.

789 Momir Nikolić, T. 12269–12270 (4 April 2011), T. 12310–12311 (5 April 2011) (stating "[a] large number of this sniping activity was random and wanton without any specific target, which means that the targets were not only those people who had to be targets, people who carried arms, but also civilians who were tending their fields or maybe working around their houses"); Cornelis Nicolai, T. 3876 (12 July 2010) (stating that ABiH hostilities were met with Bosnian Serb Forces response and "unfortunately these responses did not always target the soldiers that had perpetrated the hostilities, but the retaliation was applied to the civilian population, for example, by shelling parts of such a safe area"); Hamdija Torlak, T. 4285–4286 (23 August 2010) (stating that there were villages in the Žepa area and, for the most part, no military targets in the area of retaliatory shellings); Robert Franken, Ex. P00598, PT. 2441 (16 October 2006) (stating that civilians were wounded by shelling "several times" in Srebrenica); Joseph Kingori, Ex. P00950, PT. 19366–19369 (10 January 2008), PT. 19475–19476 (11 January 2008) (stating that ordinary farmers were attacked in the Bandera Triangle and the way the shelling was done against the enclave "was definitely aimed at the residents" who were mainly civilians); Pieter Boering, Ex. P01461, PT. 1895–1896 (19 September 2006) (stating that DutchBat observed shelling of Bosnian Muslim homes in Srebrenica). *See also* Ex. P00986, p. 1; Ex. P02161. These shelling attacks caused the Bosnian Muslim population to move from the outlying areas of the enclave into Potočari and Srebrenica towns. Pieter Boering, Ex. P01461, PT. 1895–1896, 1898 (19 September 2006). Momir Nikolić testified that he had requested detention and sanctions for VRS soldiers who sniped at targets "not meant to be the targets of sniper fire." Momir Nikolić, T. 12314 (5 April 2011).

211. During the night of 23–24 June 1995,[790] members of the 10th Sabotage Detachment and a unit of the Bratunac Brigade entered the Srebrenica enclave to carry out sabotage activities in the area of Vidikovac.[791] Mladić ordered the operation based on the request of Krstić, the then-Chief of Staff of the Drina Corps.[792] It was planned by the 2nd Lieutenant Milorad Pelemiš, Commander of the 10th Sabotage Detachment, Lieutenant Colonel Vujadin Popović, Chief of the Security Organ in the Drina Corps, Major Pavle Golić, an intelligence officer in the Drina Corps, and Petar Salapura, Chief of the Intelligence Administration in the VRS Main Staff.[793] The Chamber notes that while Momir Nikolić stated that Salapura "personally conducted" the operation,[794] Salapura himself testified that Pelemiš was the commander of the operation, which was controlled on the ground by Golić or Lieutenant-Colonel Svetozar Kosorić, Chief of Intelligence in the Drina Corps.[795] The Chamber finds that each of these individuals was significantly involved in this operation in his respective capacity.[796] In the early hours of the morning, these units entered the enclave through a mine tunnel, fired hand-held projectiles, and quickly pulled back through the same tunnel into VRS-held territory.[797] As a result, a few Bosnian Muslims were wounded and one woman was killed.[798] On 25 June 1995, the Accused reported to VRS units, including security and intelligence organs of

790 While the parties have referred to the following incident as on "23 June"; the Chamber finds that, on the totality of the evidence, the actual attack occurred in the early morning hours of 24 June 1995 between the hours of 2:00 and 4:00 a.m. *See, e.g.*, Ex. P00986, p. 2 (stating "24 June 1995" as the date of the attack); Ex. P00961, p. 1 (stating that 24 June 1995 was a "normal day with one significant event during the night"); Momir Nikolić, T. 12354–12357 (5 April 2011) (affirming the attack described in Ex. P00986 and stating that it occurred "between 2:00 and 3:00 a.m. It was done in the early morning."); Petar Salapura, T. 13531–13534 (2 May 2011) (stating that the attack occurred around 4:00 a.m.). *See also* Petar Salapura, T. 13547 (2 May 2011); Joseph Kingori, Ex. P00950, PT. 19476 (11 January 2008).

791 Momir Nikolić, T. 12354–12357 (5 April 2011); Dražen Erdemović, Ex. P00215, PT. 10396–10397 (4 May 2007) (The Chamber notes that Erdemović's testimony in the *Popović et al.* case refers to this operation occurring in March 1995. However, the Chamber considers that given the details Erdemović relays about this event—namely that it was members of the 10th Sabotage Detachment and the Bratunac Brigade entering the Srebrenica enclave through a mine tunnel, firing a few rounds from hand-held launchers, and quickly retreating—that he is speaking of the same operation as recalled by Momir Nikolić, which took place in June 1995). *See also* Ex. P00961; Richard Butler, T. 16545 (12 July 2011); Joseph Kingori, Ex. P00950, T. 19476 (11 January 2008); Ex. P02512, p. 4. The Red Berets from the 3rd Infantry Battalion of the Bratunac Brigade took part in the operation. Momir Nikolić, T. 12355 (5 April 2011). Salapura testified that the purpose of the operation was to demonstrate power, curb provocations from the protected area, and put pressure on UNPROFOR with regard to the demilitarised zone. Petar Salapura, T. 13531–13532 (2 May 2011), T. 13839–13840 (9 May 2011).

792 Petar Salapura, T. 13524–13526 (2 May 2011), T. 13663 (4 May 2011).

793 Petar Salapura, T. 13524–13525 (2 May 2011).

794 Momir Nikolić, T. 12354–12355 (5 April 2011).

795 Petar Salapura, T. 13534–13536 (2 May 2011); Ex. P02200 (Salapura order dated 21 June 1995, ordering that the Commander of the 10th Sabotage Detachment and the Chief of the Drina Corps Intelligence Department "will be responsible for collecting information, planning and carrying out the task" and the Chief of the Drina Corps Intelligence Department "will be in charge of the whole action"). Momir Nikolić also stated that he also saw Pelemiš in Bratunac. Momir Nikolić, T. 12354–12355 (5 April 2011).

796 Petar Salapura, T. 13534–13536 (2 May 2011).

797 Momir Nikolić, T. 12355–12356 (5 April 2011). Salapura testified that the police station was the target, but was not visible given the dark, foggy conditions. Petar Salapura, T. 13532 (2 May 2011), T. 13839–13840 (9 May 2011).

798 Momir Nikolić, T. 12356–12357 (5 April 2011); Ex. P00986, p. 2; Ex. P00961, p. 2.

the corps, that the ABiH had circulated "disinformation" that the VRS had carried out a sabotage attack on civilian objects.[799]

212. On 26 June 1995, UNPROFOR responded to written complaints from both warring parties, urging them to restrain their forces and refrain from attacks.[800] On the same day, the ABiH attacked in the direction of Žepa and burned the Serb village of Višnjica in the Milići municipality, killing and wounding several Bosnian Serbs, including civilians;[801] other ABiH attacks were also carried out, including one on the Command Post of the VRS Main Staff.[802] The ABiH operations in Žepa[803] were met with extensive shelling by the VRS in the period leading up to the fall of the enclave.[804] On 27 and 30 June 1995, the VRS turned its attack to UNPROFOR and launched mortars at the Žepa OPs and base at the centre of the enclave.[805] The UKRCoy was threatened with continued attacks unless UNPROFOR left.[806]

799 Ex. P02512, p. 4.
800 Ex. P00708; Ex. P00709; Cornelis Nicolai, T. 3875, 3877 (12 July 2010).
801 Ex. D00062, p. 2; Ex. P02127, p. 1; Ex. P02741, p. 1; Adjudicated Fact 71. *See also* Rupert Smith, T. 11581–11582 (21 March 2011); Momir Nikolić, T. 12573 (11 April 2011); Ex. D00238, p. 5.
802 Milomar Savčić, Ex. P02418, PT. 15243–15244 (12 September 2007). *See also* Ex. P00986.
803 Hamdija Torlak, T. 4277–4280 (23 August 2010), T. 4593–4600 (30 August 2010); Ex. D00053, p. 1.
804 Hamdija Torlak, T. 4286 (23 August 2010); Esma Palić, T. 13288 (26 April 2011); Meho Džebo, T. 14794–14795 (30 May 2011).
805 Ex. P00583, pp. 1, 4; Ex. P00580, p. 3.
806 Ex. P00583, p. 4; Ex. P00580, p. 3. *See also* Edward Joseph, T. 10774–10776 (3 March 2011).

V. THE EVENTS IN SREBRENICA IN JULY 1995 AND THEIR AFTERMATH

A. Attack on Srebrenica and the Movement of its Population (6–11 July)

1. Preparations for the Operation

213. During a visit of RS President and Supreme Commander Radovan Karadžić to the Drina Corps Command in Vlasenica in late June 1995[807] Colonel Radislav Krstić, the Chief of Staff of the Drina Corps, received the assignment to "set off for Srebrenica".[808] It was unusual for Karadžić to circumvent the VRS Main Staff and issue orders directly to the troops since the general rule was that the chain of command should be observed.[809] Karadžić requested the preparations for the assignment to be "as short as possible" and Krstić estimated that they would take three to five days.[810]

214. About half an hour to an hour after Karadžić had left, a meeting of the entire Command of the Drina Corps was held during which Krstić explained the assignment.[811] Preparations commenced immediately.[812] Krstić drafted and worded the plan and was to command the operation which was code-named "Krivaja 95".[813]

2. Operation Krivaja 95 Orders (2 July)

215. On 2 July 1995, the then-Commander of the Drina Corps, Major-General Milenko Živanović, issued two orders for Operation Krivaja 95 which laid out the plans for the attack on the enclaves and ordered various units of the Drina Corps to ready themselves for combat.[814]

216. The first order was a preparatory order.[815] It stated that the ABiH had launched a wide-ranging offensive along several axes with the objective of taking over RS territory and connecting

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807 The Chamber notes that no precise date was given by the witness.

808 Milenko Lazić, Ex. P02733, PT. 21727 (4 June 2008), PT. 21862 (5 June 2008).

809 Milenko Lazić, Ex. P02733, PT. 21745 (4 June 2008). Lazić testified that exceptions to this rule were allowed, however this was the only time he witnessed such an exception during the war. Milenko Lazić, Ex. P02733, PT. 21745–21746 (4 June 2008).

810 Milenko Lazić, Ex. P02733, PT. 21727 (4 June 2008), PT. 21862 (5 June 2008). Krstić informed Karadžić that the Drina Corps was short of ammunition, fuel, and food and Karadžić promised that he would be given everything, if he put in a request. Milenko Lazić, Ex. P02733, PT. 21866 (5 June 2008).

811 Milenko Lazić, Ex. P02733, PT. 21728 (4 June 2008).

812 Milenko Lazić, Ex. P02733, PT. 21727–21728 (4 June 2008), PT. 21863 (5 June 2008).

813 Milenko Lazić, Ex. P02733, PT. 21731 (4 June 2008), PT. 21863 (5 June 2008); Adjudicated Facts 72, 75.

814 Ex. P01200; Ex. P01202; Adjudicated Fact 72. According to Momir Nikolić, the attack was to be executed in two stages: an attack against the enclave, followed by the "forceful removal of the entire Muslim population from Srebrenica." Momir Nikolić, T. 12683–12685 (12 April 2011). *See also* Ex. P01443 (map signed by Živanović and approved by Mladić showing the decision for active combat operations, marked as "military secret, strictly confidential, Krivaja 95").

the enclaves of Srebrenica and Žepa with ABiH held territory.[816] It required the Command of the Drina Corps to obtain forces for intervention, the repulsion of the ABiH attack and the conduct of active combat operations.[817] All units were ordered to be "ready for active combat operations and switching from defence to attack with all forces in their areas of responsibility".[818]

217. The second order was an order for active combat describing "the task of carrying out offensive activities [...] in order to split apart the enclaves of Žepa and Srebrenica, and to reduce them to their urban areas" pursuant to Directives 7 and 7/1.[819] By using "forces for active defence at the front, and active operation forces for separating and reducing the enclaves in size" the objective of the order was "by a surprise attack, to separate and reduce in size the Srebrenica and Žepa enclaves, to improve the tactical position of the forces in the depth of the area, and to create conditions for the elimination of the enclaves".[820] Security organs and MP were to be responsible to indicate "the areas for gathering and securing prisoners of war and war booty".[821] In this regard the order instructed that in dealing with POWs and the civilian population the forces needed to "behave in every way in accordance with the Geneva Conventions".[822] A copy of the second order was sent to the VRS Main Staff.[823]

218. The second order further gave instructions on the specific actions to be taken by the different units participating.[824] Commanders received their assignments and specific orders on 5 July.[825] Combat readiness was set for 6 July 1995, at 4:00 a.m.[826]

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815 PW-057, Ex. P02279 (confidential), PT. 16408 (closed session) (16 October 2007); Ex. P01200, p. 1.

816 Ex. P01200, pp. 1–2.

817 Ex. P01200, p. 2.

818 Ex. P01200, p. 3.

819 Ex. P01202, p. 3. Živanović predicted offensive actions by the 28th Division from outside and within the enclave as the VRS believed that the central goal of the ABiH was to "connect the enclaves with the central part of the territory of former Bosnia and Herzegovina, which is held by Muslim forces". Ex. P01202, p. 1. *See also* Adjudicated Fact 77. The task of reducing the enclaves to their urban areas relates to the fact that at the time of their creation the actual boundaries of the enclaves were never clearly defined. The position of the Bosnian Serbs was that the true boundaries were in fact the urban areas. Richard Butler, T. 16555 (13 July 2011). *See also* Adjudicated Fact 76 (The initial Krivaja 95 plan did not include taking the town of Srebrenica. An assessment had been made by the VRS command that conditions were not right at that moment for capturing Srebrenica town).

820 Ex. P01202, p. 3. *See also* Adjudicated Fact 78.

821 Ex. P01202, p. 7. According to Butler, this was in accordance with "the established rules" of the VRS and would entail that brigade security officers working with the MP would identify and designate locations where they would hold POWs taken during the operation, the details of which would be provided to subordinate formations. Richard Butler, T. 16559–16560 (13 July 2011).

822 Ex. P01202, p. 7. Mirko Trivić, Commander of the 2nd Romanija Brigade, testified that the Krivaja 95 participants were instructed to avoid any conflicts with UN personnel and civilians. Mirko Trivić, Ex. P01197, PT. 11795, 11884–11886 (21 May 2007).

823 Ex. P01202, p. 10.

824 Ex. P01202, pp. 3–5 (giving orders to the 1st Battalion of the Zvornik Brigade, the 2nd Battalion to be formed from part of the forces of the Birač Brigade, the 2nd Romanija Brigade with a company from the Skelani Battalion, part of the Bratunac Brigade, the Rogatica Brigade, including the 1st Battalion of the Bratunac Brigade, the Milići Brigade and reserve forces of the size of two or three companies of the MUP and one company from the Vlasenica Brigade). *See also* Ex. P01081, p. 1 (an order that set up a tactical group which was commanded by

3. Start of VRS Combat Operations against Srebrenica (6 July)

219. A daily situation report of the VRS Main Staff dated 6 July 1995 reported the start of the VRS combat operations against Srebrenica.[827] The report details that the units of the Drina Corps have been "prepared and grouped for active combat operations against the enclaves of Srebrenica and Žepa".[828] In the early morning hours, the military attack on Srebrenica started with high levels of activity mostly in the southern, eastern and northern parts of the enclave.[829] The shelling by the VRS followed a pattern in that they shelled at least fifty rounds and then stopped and resumed.[830] In total, at least 250 artillery and mortar rounds were recorded.[831] In addition, the UN compound in Potočari, the Bandera Triangle, and various OPs were attacked and DutchBat reported that six 120mm rockets landed close to their compound in Potočari around 3:30 a.m.[832] The shelling of the area surrounding Potočari continued until 4:00 p.m.[833] Despite the heavy shelling the number of casualties was low.[834]

4. VRS Shelling of Srebrenica and Potočari (7 and 9 July)

220. In the morning of 7 July the shelling resumed following the pattern of the previous day and aiming at the same targets, that is Srebrenica and Potočari.[835] The VRS fired indiscriminately into the safe area and directly targeted UN facilities, causing several civilian deaths.[836] The marketplace

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Vinko Pandurević); Mirko Trivić, Ex. P01197, PT. 11798–11799 (18 May 2007). Further, Trivić set up a tactical group and assigned Ljubo Erić to command it. Mirko Trivić, Ex. P01197, PT. 11798–11800 (18 May 2007). *See also* Ex. P02513, p. 3 (a Main Staff report to the RS President dated 2 July 1995 stating that unengaged forces were being prepared for forthcoming active combat operations).

825 Mirko Trivić, Ex. P01197, PT. 11801 (18 May 2007).

826 Ex. P01202, p. 3; Mirko Trivić, Ex. P01197, PT. 11809–11810 (18 May 2007). *See also* Adjudicated Fact 84.

827 Ex. P02514. *See also* Robert Franken, Ex. P00598, PT. 2456 (16 October 2006) (testifying that the attack on the Srebrenica enclave began with heavy firing around OP Foxtrot on 6 July 1995); Adjudicated Fact 85; Ex. P00621, p. 1; Osman Salkić, Ex. P01373 (4 December 2004), p. 4.

828 Ex. P02514, p. 4.

829 Joseph Kingori, Ex. P00950, PT. 19172–19173 (13 December 2007); Robert Franken, Ex. P00598, PT. 2457 (16 October 2006); Cornelis Nicolai, Ex. P00674, PT. 18578–18579 (30 November 2007); Evert Rave, Ex. P01004, KT. 842 (20 March 2000); Lazar Ristić, Ex. P01233, PT. 10042 (16 April 2007); Ex. P00675, p. 1; Ex. P00676, p. 2.

830 Joseph Kingori, Ex. P00950, PT. 19173 (13 December 2007).

831 Ex. P00675, p. 1; Joseph Kingori, Ex. P00950, PT. 19177–19179 (13 December 2007).

832 Ex. P00675, p. 1 (The Chamber understands the reference to the "DutchBat headquarters" to be referring to the UN compound in Potočari). *See supra* para. 169. *See also* Ex. P00676, p. 2 (stating that the UN compound near Potočari was targeted several times during the day and OP Foxtrot was hit by several tank rounds); Evert Rave, Ex. P01004, KT. 841 (20 March 2000). *See also* Ex. P00094, p. 8 (map of the Srebrenica enclave showing the location of the OPs); Jean-René Ruez, T. 912–913 (29 March 2010).

833 Ex. P00675, p. 1.

834 Joseph Kingori, Ex. P00950, PT. 19176 (13 December 2007); Ex. P00675, pp. 1–2. *See also* Ex. P00676, p. 2.

835 Ex. P00677, p. 1; Joseph Kingori, Ex. P00950, PT. 19181 (13 December 2007). Over 200 shells hit Srebrenica town on 7 July. Joseph Kingori, Ex. P00950, PT. 19188 (13 December 2007).

836 Ex. P00684, p. 2 (UNPROFOR warning to the Bosnian Serbs dated 9 July stating that the VRS resumed attacks against the Srebrenica enclave on 7 July firing indiscriminately into the safe area and directly targeted UN facilities, causing several civilian deaths); Cornelis Nicolai, Ex. P00674, PT. 18477 (29 November 2007), PT. 18534 (30 November 2007) (testifying, after being read the passage from Ex. P00684 regarding the civilian deaths on 7 July, that it was correct that he received information during this period of time that civilians had been

was hit several times, and, according to the testimony of Kingori, the hospital and the PTT building in Srebrenica town were targeted, although they were not struck.[837] However, despite the tense situation in Srebrenica and Potočari the overall level of military activity was rather low compared to the day before.[838]

221. On 8 July the shelling started at 8:00 a.m. and concentrated more on the densely populated areas in Srebrenica and Potočari.[839] Once the southern perimeter of the enclave began to collapse, about 4,000 Bosnian Muslims, who had been living in a nearby Swedish Shelter Project for "refugees", fled north into Srebrenica town.[840]

222. In the days following 6 July, the five DutchBat OPs in the southern part of the enclave fell one by one in the face of the VRS advance.[841] On 8 July, after OP Foxtrot sustained increased fire and was hit several times,[842] the DutchBat personnel received permission to withdraw.[843] During the process of withdrawing, an ABiH soldier fired at an APC and hit DutchBat gunner, Private

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killed by the VRS shelling or firing, but that he was not aware of the exact number of casualties); Ex. P00677, p. 2 (a UNMO report of 7 July stating that the VRS offensive seems to be steadily intensifying and that whatever their aims are, they seem to be concentrating more on civilian targets in Srebrenica town and Potočari). *See also* PW-071, T. 6042 (closed session) (30 September 2010) (testifying that the school of Srebrenica had to close that day due to intense shelling). By 7 July many civilians had been injured and approximately four were killed in the offensive. Joseph Kingori, Ex. P00950, PT. 19190 (13 December 2007); Ex. P00967, p. 2.

837 Joseph Kingori, Ex. P00950, PT. 19181–19183 (13 December 2007) (testifying that he concluded that the hospital was targeted because shells were missing just "by a whisker" and the shells aimed at the PTT building landed just "across the [Drina] river").

838 Ex. P00967, p. 2; Cornelis Nicolai, Ex. P00674, PT. 18539 (30 November 2007); Ex. P00677, p. 1. Kingori testified that there were "definitely over 200" shells on this second day. Joseph Kingori, Ex. P00950, PT. 19188 (13 December 2007).

839 Ex. P00968, p. 1. According to an ABiH report dated 8 July 1995, an enemy tank was "destroying the centre of Srebrenica on a daily basis". Ex. P02581, p. 1. Kingori recalled this day as having the heaviest shelling. Joseph Kingori, Ex. P00950, PT. 19191 (13 December 2007).

840 Joseph Kingori, Ex. P00950, PT. 19220–19221 (13 December 2007); Ex. P00969, p. 1; Adjudicated Fact 95. At 10:40 p.m. on 8 July, UNMO witnessed the people from the Swedish Shelter Project streaming in from the village outside Srebrenica. *Ibid. See also* Pieter Boering, Ex. P01461, PT. 1898 (19 September 2006); Ex. P00621, p. 2. PW-071 also testified that in total 3,000 or 4,000 people were driven out between 7 and 10 July and most of them passed through the street in which PW-071 lived. PW-071, T. 6043–6044 (closed session) (30 September 2010). *See supra* paras. 209, 780.

841 Robert Franken, Ex. P00598, PT. 2461–2462 (16 October 2006). *See also* Adjudicated Fact 90 (Soldiers at the OPs were detained and forced to hand over their equipment); Adjudicated Fact 91 (Some of the Dutch soldiers retreated into the enclave after their posts were attacked, but the crews of other observation posts surrendered into Bosnian Serb custody); Adjudicated Fact 92 (The DutchBat soldiers who were detained were taken to Bratunac and Milići); Pieter Boering, Ex. P01461, PT. 1924 (19 September 2006). The ABiH soldiers tried to stop the DutchBat's withdrawal from the OPs. Cornelis Nicolai, T. 3878 (12 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18463 (29 November 2007); Evert Rave, T. 6838, 6871–6874 (27 October 2010), T. 6902 (28 October 2010); Evert Rave, Ex. P01004, KT. 843–844 (20 March 2000), KT. 921–922, 934–935 (21 March 2000); Ex. D00020, p. 20. OP Sierra and OP Uniform also fell at 6:40 p.m. on 8 July after having been surrounded by VRS forces and ordered to surrender. Ex. P00621, p. 1. *See also* Robert Franken, Ex. P00598, PT. 2461 (16 October 2006); Evert Rave, Ex. P01004, KT. 843–844 (20 March 2000).

842 Robert Franken, Ex. P00598, PT. 2459–2460 (16 October 2006); Robert Franken, T. 3342 (30 June 2010); Cornelis Nicolai, T. 3878 (12 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18462–18463, 18466, 18474 (29 November 2007); Ex. P00679; Ex. P00706; Ex. P00621, p. 1. In Franken's opinion, there was no possibility that OP Foxtrot was fired upon accidentally, as the T-55 tank was located only 150 or 200 metres away from the OP. Robert Franken, T. 3349 (30 June 2010).

843 Robert Franken, Ex. P00598, PT. 2460 (16 October 2006); Cornelis Nicolai, Ex. P00674, PT. 18463

Raviv Van Renssen, who died as a result.[844] Nicolai called the Accused to protest against the attacks on OP Foxtrot and the infiltration of the VRS into the enclave, insisting that the VRS withdraw its troops behind the agreed cease-fire lines.[845] The Accused replied that the ABiH possessed six UNPROFOR APCs in the area of Srebrenica and requested DutchBat to remove all heavy weapons, especially the APCs, from the ABiH forces immediately.[846] It was agreed between the Accused and Nicolai that the latter should submit a list of the exact locations of the OPs in order to prevent the UN personnel carriers being fired on in the future.[847] Živanović sent an urgent telegram to Drina Corps IKM and the VRS Main Staff informing them about the protest from UNPROFOR and the VRS response.[848]

223. The VRS continued to proceed with its operations on 9 July after it had overtaken several OPs in the south-eastern part of the Srebrenica enclave.[849] In addition, OP Mike located at the north of the enclave came under mortar and direct fire after which its commander was permitted to withdraw.[850] On the same day the UNMOs stationed in the PTT building in Srebrenica town went to the UN compound in Potočari because it was safer.[851] The shelling on Srebrenica recommenced at 8:00 a.m. on 9 July and the entire enclave was surrounded by the VRS with various artillery positions, multiple-rocket launch systems, and mortar positions.[852] By the afternoon more than 70% of the explosions observed were in the centre of the enclave.[853] At that point it became clear that the VRS was attacking the demilitarised zone and that Srebrenica might fall at any time as the VRS had pressed four kilometres deep into the enclave, halting just one kilometre short of Srebrenica town itself.[854] In a letter sent on 9 July by Osman Suljić, the President of the municipal council in

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(29 November 2007); Evert Rave, Ex. P01004, KT. 843 (20 March 2000).

844 Robert Franken, Ex. P00598, PT. 2460 (16 October 2006); Robert Franken, T. 3478 (1 July 2010); Cornelis Nicolai, T. 3878–3879 (12 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18463 (29 November 2007); Ex. P00706, p. 1; Vincentius Egbers, T. 7107, 7128 (1 November 2010); Louis Fortin, Ex. P00587, PT. 18363 (28 November 2007); Ex. P00684, p. 2; Ex. P00621, p. 1. *But see* Evert Rave, T. 6838, 6871–6874 (27 October 2010), T. 6902 (28 October 2010); Evert Rave, Ex. P01004, KT. 843–844 (20 March 2000), KT. 921–922, 934–935 (21 March 2010) (testifying that Van Renssen was shot by a Muslim civilian who tried to block the APC). *See also* Ex. P02515, pp. 1–2.

845 Cornelis Nicolai, T. 3881–3882 (12 July 2010) (confirming that he had this conversation with the Accused); Cornelis Nicolai, Ex. P00674, PT. 18464–18466 (29 November 2007); Ex. P00306 (confidential). According to Ex. P00314 (confidential) the "X" referred to in Ex. P00306 (confidential) is "General Tolomir". *See also* Ex. P00697.

846 Ex. P00786; Ex. P00306 (confidential); Cornelis Nicolai, T. 3882 (12 July 2010); Ex. D00069.

847 Ex. P00786; Cornelis Nicolai, Ex. P00674, PT. 18466 (29 November 2007). *See also* Ex. P00309 (confidential), p. 3. Nicolai was not expecting the Accused to stop the attacks but wanted him to convey the message to Mladić, who could stop them. Cornelis Nicolai, T. 3892–3893 (13 July 2010).

848 Ex. D00069.

849 Ex. P00621, p. 2.

850 Robert Franken, Ex. P00598, PT. 2461 (16 October 2006). *See also* Paul Groenewegen, Ex. P00098, BT. 1017 (10 July 2003).

851 Joseph Kingori, Ex. P00950, PT. 19215–19217 (13 December 2007); Evert Rave, Ex. P01004, KT. 847–849 (20 March 2000).

852 Cornelis Nicolai, Ex. P00674, PT. 18473–18474, 18480 (29 November 2007); Ex. P00969, p. 1.

853 Ex. P00970.

854 Cornelis Nicolai, T. 3905–3906 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18474 (29 November 2007);

Srebrenica in 1995,[855] to Alija Izetbegović and Rasim Delić, he reports that the VRS entered Srebrenica at 6:00 p.m. that day and that the ABiH is no longer able to prevent VRS forces from entering the town.[856] He further informs that "[c]haos and panic prevail and the civilian authorities are left with the last unpopular step to save the population", which was to enter negotiations with the VRS to open a corridor for the population to the nearest free territory.[857]

224. Nicolai had several telephone conversations with the Accused on 9 July, regarding, *inter alia,* the continued VRS infiltration into the demilitarised zone.[858] Following a first conversation at 12:30 p.m.,[859] Nicolai again expressed UNPROFOR's concern about the continually deteriorating circumstances at 5:50 p.m. as VRS forces were still infiltrating the enclave.[860] Nicolai demanded that the Accused have the VRS troops ordered to withdraw to the borders of the enclave or UNPROFOR would be obliged to use other means to force the VRS to withdraw.[861] The Accused replied by saying that he did not believe Nicolai's claims regarding the advance of VRS troops into the enclave and stated that the UN was not a target of the VRS and would not be fired upon; however he promised he would verify the information.[862] At 7:30 p.m. the Accused informed Nicolai that he had passed his concerns to his subordinate commanders adding that the VRS did not have any problems with UNPROFOR or the civilian population.[863] The Accused further stated that the only problem of the VRS was the ABiH's offensive actions taken from the demilitarised zone and their attempt to link up the enclaves of Srebrenica and Žepa.[864]

Ex. P00969, p. 1; Ex. P00680; Adjudicated Fact 96. *See also* Ex. P00699; Ex. P00700. Momir Nikolić testified that during the attack on Srebrenica, the town of Srebrenica, which was full of people, was itself a target. Momir Nikolić, T. 12370 (6 April 2011). *See also* Ex. P02582, p. 1.

855 PW-071, T. 6232 (closed session) (6 October 2010).

856 Ex. P00990.

857 Ex. P00990. *See also* Joseph Kingori, T. 5531–5534 (16 September 2010) (testifying in this regard that while he was not aware that a plan existed to enter negotiations with the VRS, evacuation was the only thing left to do, because Srebrenica had been attacked and it was important to look for alternatives to save the people).

858 Cornelis Nicolai, T. 3902–3906, 3919 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18468–18469 (29 November 2007); Ex. P00310 (confidential); Ex. P00311 (confidential); Ex. P00313 (confidential); Ex. P00680; Ex. P00682; Ex. P00683; Ex. P00698; Ex P00699; Ex. P00700; Ex. P00702.

859 Ex. P00682; Ex. P00698. During the conversation at approximately 12:30 p.m., Nicolai informed the Accused that the VRS troops had blocked the convoy with Van Renssen's remains and the Accused, who was not aware of this obstruction, expressed his condolences. The Accused, however, promised to instruct his troops to allow the convoy to pass. Van Renssen's remains were allowed through later that day. *Ibid. See also* Stefanie Frease, T. 5110–5125 (8 September 2010).

860 Cornelis Nicolai, T. 3905–3906 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18469 (29 November 2007); Ex. P00680; Ex. P00699; Ex. P00700.

861 Cornelis Nicolai, T. 3905–3906 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18469 (29 November 2007); Ex. P00680; Ex, P00699; Ex. P00700; Ex. P00311 (confidential). *See also* Stefanie Frease, T. 5127–5129 (8 September 2010).

862 Cornelis Nicolai, Ex. P00674, PT. 18470 (29 November 2007); Cornelis Nicolai, T. 3906, 3912 (13 July 2010); Ex. P00311 (confidential), p. 2; Ex. P00680; Ex. P00699; Ex. P00700.

863 Cornelis Nicolai, T. 3919 (13 July 2010); Ex. P00313 (confidential), p. 2; Ex. P00683, p. 1; Ex. P00702. *See also* Ex. D00085 (in which the Accused informs the Drina Corps Command (General Krstić personally) and the Main Staff Sector for Intelligence and Security Affairs of this conversation, including a request to pay particular attention to the protection of members of UNPROFOR and the civilian population).

864 Ex. P00683, p. 1.

225. During this last conversation, Nicolai informed the Accused that if the VRS did not withdraw from the demilitarised zone, a situation could materialise in which UNPROFOR would be forced to use air support.[865] In this regard, Nicolai stressed to the Accused that the VRS by now had received sufficient warnings on several occasions and that "directly attacking the safe area, [by then was] far beyond their self-defence."[866]

5. Expansion of the Original Krivaja 95 orders and Other Developments (9 July)

226. Late on 9 July 1995, Karadžić issued an additional order, expanding the scope of the original Krivaja 95 orders, and authorising the VRS to capture the town of Srebrenica.[867] The Accused circulated this change of plan in an urgent telegram to the Drina Corps IKM and to Gvero and Krstić personally in order to inform the fighting units around Srebrenica.[868] On the same day, DutchBat received an order from the UNPROFOR Command in Sarajevo to defend the town of Srebrenica with all military means.[869] Franken thereupon issued a written "green"[870] order to Captain Groen, the Commander of the Bravo Company in Srebrenica,[871] to take blocking positions on the southern edge of Srebrenica with the purpose of preventing the VRS from entering the town.[872] From that point, DutchBat moved from rules of engagement in which use of force was limited to self-defence to an armed confrontation with the VRS.[873]

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865 Ex. P00683; Cornelis Nicolai, T. 3920 (13 July 2010). *See also,* Ex. P00313 (confidential), p. 2. The Accused reiterated during this telephone conversation that the ABiH had not been fully disarmed of heavy weapons and were still using six APCs received or taken from UNPROFOR. Ex. P00313 (confidential), p. 2; Ex. P00683, p. 2; Cornelis Nicolai, T. 3922 (13 July 2010); Cornelis Nicolai, Ex. P00674 , PT. 18475 (29 November 2007).

866 Cornelis Nicolai, T. 3921 (13 July 2010); Ex. P00313 (confidential), p. 2; Ex. P00683, pp. 1–2. The strong warning that the VRS should withdraw was supported by the UNPROFOR Force Commander, General Janvier, and Mr. Akashi. Ex. P00683, p. 1. *See also* Ex. P00684, p. 2 (the written UNPROFOR warning to the VRS which was issued later that day at 10:20 p.m.).

867 Ex. D00041 (a telegram dated 11:50 p.m. on 9 July and typesigned by the Accused which states, *inter alia*, that Karadžić had "agreed with the continuation of operations for the takeover of Srebrenica, disarming Muslim terrorist gangs and complete demilitarization of the Srebrenica enclave"). *See also* Adjudicated Fact 97. With regard to the attack on Srebrenica and its takeover in July 1995, Momir Nikolić reaffirmed what he had said in the *Popović et al.* case, namely that: "You can interpret it any which way you want, but the goal of the VRS forces was to have the Srebrenica enclave empty of Muslims. Whether it was achieved this way or that does not matter. The enclave of Srebrenica became empty of any Muslims, and that was the final goal. No one can deny that." Momir Nikolić, T. 12683–12684 (12 April 2011).

868 Ex. D00041 (this instruction also makes reference to securing adequate protection for the civilian Bosnian Muslim population, UNPROFOR, and POWs in light of the Geneva Conventions). *See also* Adjudicated Fact 98.

869 Robert Franken, Ex. P00598, PT. 2462 (16 October 2006); Robert Franken, T. 3452 (1 July 2010).

870 Franken explained that the term "green" was meant to indicate that, in contrast to a normal "blue" operation, Groen "could use immediately all his means without the restrictions of the UN to execute his order [and] to proceed now as a normal army, not a UN army". Robert Franken, Ex. P00598, PT. 2464–2465 (16 October 2006).

871 Robert Franken, T. 3351 (30 June 2010).

872 Ex. P00601; Robert Franken, Ex. P00598, PT. 2462 (16 October 2006); Robert Franken, T. 3473 (1 July 2010), T. 3497 (6 July 2010). Egbers testified that Groen instructed him to use all means to ensure that additional advances by the Bosnian Serbs were stopped. Vincentius Egbers, T. 7161 (2 November 2010). According to Smith, the purpose of the blocking positions was to provide a clear line, not only as a defence on that axis, but as a point where it was clear that the UN would become engaged in defending the enclave should the VRS attack continue, in order to ensure the safety of the civil population in the enclave. Rupert Smith, T. 11899–11901, 11903–11904 (28 March 2011). Egbers testified that a hypothetical line was drawn between the blocking positions

227. During the evening, UNPROFOR sent Mladić at the VRS Headquarters in Pale a warning approved by Janvier and Gobilliard stating that if the VRS attacked DutchBat blocking positions NATO close air support would be employed.[874] Prior to transmitting the warning to Pale, Janvier had tried in vain to contact Mladić to communicate the warning to him directly but instead of Mladić he was able to speak with the Accused.[875] The Accused gave assurances that the VRS had very good relations with all the members of UNPROFOR and the Bosnian Muslim civilian population and that "we will do everything we can to calm down the situation and to find a reasonable solution".[876]

6. Situation in Srebrenica on 10 July 1995

228. On 10 July 1995, DutchBat received an ultimatum from the VRS by radio stating that if DutchBat did not disarm the Bosnian Muslims, the VRS would start doing so.[877] The VRS also stated that DutchBat, ABiH soldiers and the civilian population were permitted to leave Srebrenica through OP Papa at Žuti Most (Yellow Bridge) at the north of the enclave within a 48 hour period from 6:00 a.m. in the morning of 11 July but they had to leave their equipment and weapons behind.[878] The UN reacted and ordered the VRS to withdraw to the boundary of the enclave as of 6:00 a.m. on 11 July or otherwise there would be massive air strikes against all VRS targets in and around the enclave.[879]

229. By about 6:30 a.m. on 10 July, DutchBat had established blocking positions on the road leading into Srebrenica to signify clearly at what stage they would engage in the defence of the enclave.[880] After VRS troops continued to attack DutchBat, ultimately assaulting a blocking position, DutchBat requested NATO air support, but no assistance was forthcoming during 10

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to warn the VRS that if they crossed this line, air support would be used. Vincentius Egbers, T. 7165–7176 (2 November 2010), T. 7494–7497 (9 November 2010); Ex. P01336 (with markings of Egbers). *See also* Ex. P02133, p. 3.

873 Robert Franken, Ex. P00598, PT. 2606 (17 October 2006); Robert Franken, T. 3453, 3475 (1 July 2010).

874 Ex. P00684; Cornelis Nicolai, T. 3917, 3926–3927 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18471, 18476–18478 (29 November 2007). *See also* Joseph Kingori, T. 5517 (16 September 2010).

875 Cornelis Nicolai, T. 3917–3918 (13 July 2010); Ex. P00293 (confidential). *See also* Ex. P00312 (confidential); Ex. P00314 (confidential).

876 Ex. P00293, pp. 2–3 (confidential). *See also* Cornelis Nicolai, T. 3928–3929, 3939 (13 July 2010).

877 Ex. P00602, p. 1; Robert Franken, T. 3351–3353 (30 June 2010), T. 3434 (1 July 2010).

878 Robert Franken, Ex. P00598, PT. 2474–2475, 2477–2478 (16 October 2006); Ex. P00602, p. 1. Ex. P00974, p. 3.

879 Ex. P00602, pp. 1–2; Robert Franken, Ex. P00598, PT. 2477 (16 October 2006); Robert Franken, T. 3352 (30 June 2010). Franken transmitted the text of the ultimatum to Groen. Robert Franken, Ex. P00598, PT. 2475 (16 October 2006). The UN ordered the VRS to withdraw to the "Mourillon lines", which were the boundary of the demilitarised zone established by the Mourillon agreement of 8 May 1993. Ex. P00684, p. 2; Robert Franken, Ex. P00598, PT. 2477 (16 October 2006). *See also* Ex. D00065; Robert Franken, T. 3400–3401 (30 June 2010).

880 Robert Franken, Ex. P00598, PT. 2471 (16 October 2006), PT. 2543–2544 (17 October 2006); Ex. P00684, p. 2 (which reads that the attack against the safe area "is unacceptable and represents a grave escalation of the conflict" and that DutchBat has, therefore, "been ordered to establish a blocking position to the south of the town"). *See also* Evert Rave, Ex. P01004, KT. 849–850 (20 March 2000). DutchBat planned four blocking positions but due to

July.[881] In a telephone conversation with Janvier on the morning of 10 July Mladić said that the Bosnian Muslims had been carrying out attacks on civilians and that the VRS was doing everything it could to keep the situation under control and for it not to escalate.[882]

230. On 10 July, the situation in Srebrenica town was tense and many residents, some of them armed, crowded the streets.[883] At 11:00 a.m. the direct surroundings of the hospital were hit by two heavy shells.[884] By 12:30 p.m., UNMOs had recorded over 100 detonations.[885] The DutchBat Bravo Company compound also came under massive shell fire and a mortar "grenade" landed nearby.[886] By the evening of 10 July, the UNMO daily situation report detailed that if the progressively worsening situation in Srebrenica continued, a massacre was possible and that as a result the relationship with the local population was deteriorating and the UN was losing credibility in BiH.[887]

VRS fire these needed to be adjusted. The positions are indicated by three parallel marks between OPs U and G on Ex. P00605. Robert Franken, Ex. P00598, PT. 2471 (16 October 2006), PT. 2542–2544 (17 October 2006).

881 Cornelis Nicolai, T. 3936, 3938 (13 July 2010), T. 4160–4161, 4164–4165 (19 August 2010); Cornelis Nicolai, Ex. P00674, PT. 18482–18483 (29 November 2007), PT. 18563 (30 November 2007); Robert Franken, Ex. P00598, PT. 2471–2472 (16 October 2006); Evert Rave, Ex. P01004, KT. 850–851 (20 March 2000); Adjudicated Fact 109. Massive air-strikes were not requested because obtaining permission would have taken a long time and close air-support was believed to be a more proportionate reaction that would provide sufficient deterrent to make the VRS withdraw. Cornelis Nicolai, Ex. P00674, PT. 18484 (29 November 2007). On the evening of 10 July Nicolai who was unable to give a message to any general or senior officer at the VRS Main Staff informed the switchboard operator that he had called for close air support because of the Bosnian Serb attack on Srebrenica. Cornelis Nicolai, Ex. P00674, PT. 18484 (29 November 2007); Ex. P00685; Ex. P00705. Boering and Karremans discussed air strikes and air support during a meeting at the PTT building in Srebrenica with the ABiH leaders. Pieter Boering, Ex. P01461 PT. 1923, 1926 (19 September 2006); Evert Rave, T. 6850–6851 (27 October 2010); Evert Rave, Ex. P01004, KT. 853 (20 March 2000). *See also* Robert Franken, T. 3482 (1 July 2010), T. 3494 (6 July 2010). Egbers testified that he was ordered to Bravo 1 at 7:00 a.m. on 10 July as a NATO air strike was expected, but no strike was carried out. Vincentius Egbers, T. 7160, 7177 (2 November 2010); Vincentius Egbers, Ex. P01142, PT. 2938–2940 (20 October 2006). UN Security Council Resolutions 824 and 836 entitled UNPROFOR to use air support if either the local population or UNPROFOR troops were under attack. Cornelis Nicolai, T. 4165 (19 August 2010).

882 Ex. P00319 (confidential), p. 1; Ex. P00759. On 10 July the VRS issued a press release which stated that its combat activities were in no way directed against civilians or UNPROFOR members. Ex. P00691, p. 2 (press release entitled "Srebrenica the Muslim War Trump Card" signed by Gvero). *See also* Cornelis Nicolai, Ex. P00674, PT. 18484–18485 (29 November 2007) (testifying that the assertion in Ex. P00691 that VRS combat activities were in no way directed against civilians or UNPROFOR members was absolutely incorrect). In a letter to Smith of 10 July Mladić also stated that the VRS activities in the Srebrenica enclave were not directed against civilians or UNPROFOR members. Ex. D00185, p. 2.

883 Evert Rave, Ex. P01004, KT. 851–852 (20 March 2000); Adjudicated Fact 100. *See also* Osman Salkić, Ex. P01373 (4 December 2004), p. 4 (stating that two villages just outside Srebrenica—Pusmulići and Stupina—fell to VRS forces and the siege was becoming intense);

884 Ex. P00973, p. 3; Ex. P00989. *See also* Adjudicated Fact 102 (On 10 July, shells fired by the VRS hit a hospital where 2,000 civilians had gathered for refuge and six of them were killed.) The UNMO report of 10 July commented that it looked as if the VRS was now targeting the hospital and its surroundings. Ex. P00973, p. 3; Ex. P00989. Kingori testified that there were no soldiers in areas targeted by the VRS such as the market or the hospital, and that the few ABiH soldiers in Srebrenica town did not justify such heavy shelling. Joseph Kingori, Ex. P00950, PT. 19223 (13 December 2007); Joseph Kingori, T. 5535 (16 September 2010).

885 Ex. P00973, p. 3; Ex. P00989. Franken testified that it was standard procedure to report the details of shelling, but on 10 July he ordered the Bravo Company to stop counting when the number of detonations had reached approximately 160 to 200. Robert Franken, Ex. P00598, PT. 2473 (16 October 2006).

886 Robert Franken, Ex. P00598, PT. 2473 (16 October 2006), PT. 2551 (17 October 2006); Pieter Boering, Ex. P01461 PT. 1932 (19 September 2006). *See also* Johannes Rutten, Ex. P02638, KT. 2107–2108 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4829–4830 (30 November 2006).

887 Ex. P00973, p. 1. Rave testified that during the night of 10 July a DutchBat officer told him that the VRS had already started "cleansing the houses" in the southern part of the enclave and that they "went into the houses,

Later that night, 1,500 armed men gathered on the marketplace in Srebrenica town—the last time that DutchBat took notice of the ABiH 28th Division in Srebrenica.[888] Not only did the ABiH start leaving the enclave that night, but able-bodied men from Srebrenica also began leaving through the woods towards the villages of Jaglići and Šušnjari in the north-west of Srebrenica.[889]

231. In a telephone conversation between the Accused and Janvier at 8:10 p.m., Janvier once more demanded that the VRS should stop attacking the UN troops in the south and retreat to its previous position of 9 July.[890] The Accused promised to contact the VRS Commander at the location concerned and to issue an order to stop the attack.[891] About an hour later in another telephone conversation the Accused told Janvier that he had issued an order for the attack to stop and said that fire had been opened on the VRS from a UN checkpoint following orders issued over the Bosnian Muslim radio network.[892] Janvier repeated his demands of a cessation of the VRS attack and a withdrawal to the positions of 9 July in order to avoid NATO air strikes.[893] In a final conversation with Janvier that evening at 10:30 p.m., the Accused said that he had relayed all messages to Mladić who had "exerted" his influence to calm down the situation.[894]

232. That same day, it was decided that a detachment of a part of RS/MUP forces from the Sarajevo front were to be sent sometime on 11 July as an independent unit to the Srebrenica sector.[895] The company consisted of the 2nd Šekovići Detachment, the 1st Company of the PJP of Zvornik SJB, a mixed Company of joint Republic of Serbian Krajina, Serbian and RS MUP forces and a company from the training camp at Jahorina.[896]

7. Movement of the Bosnian Muslims (10 and 11 July)

233. On 10 and 11 July 1995, large groups of Bosnian Muslims moved into Srebrenica town desperate for protection and joined the stream of thousands of people that crowded around the DutchBat Bravo Company compound in Srebrenica eventually forcing their way inside.[897] The

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started shooting, burning houses". Evert Rave, Ex. P01004, KT. 854 (20 March 2000). *See also* PW-003, Ex. P01509, BT. 6080 (17 December 2003) (indicating that the VRS had already entered the southern part of Srebrenica on 10 July).

888 Robert Franken, Ex. P00598, PT. 2584 (17 October 2006), PT. 2646 (18 October 2006); Cornelis Nicolai, Ex. P00674, PT. 18527 (30 November 2007).

889 *See infra* paras. 237–240.

890 Ex. P00775; Ex. P00315 (confidential). *See also* Stefanie Frease, T. 5131–5132 (8 September 2010).

891 Ex. P00775; Ex. P00315 (confidential). *See also* Stefanie Frease, T. 5131–5132 (8 September 2010).

892 Ex. P00316 (confidential), pp. 1–3; Ex. P00776.

893 Ex. P00776.

894 Ex. P00294 (confidential), p. 2. *But see* Ex. P02517, p. 1 (an order to the Command of the Drina Corps and 65th Protection Regiment of 10 July, in which Mladić refers to the successes on the Srebrenica front, thereby contradicting the promises made to UNPROFOR).

895 Ex. P02516.

896 Ex. P02516. Borovčanin was designated as the commander of the MUP units and obliged to make contact with the Corps Chief of Staff, Krstić. *Ibid.*

897 Robert Franken, Ex. P00598, PT. 2479–2480 (16 October 2006); Evert Rave, T. 6743 (26 October 2010); Pieter

situation deteriorated further when mortar shells landed inside the compound around noon on 11 July, wounding several people.[898] Following this shelling, Bosnian Muslims, assisted by DutchBat troops, began to leave Srebrenica moving north towards Potočari.[899] They were guided by DutchBat on their way to the UN compound in Potočari.[900] En route shells fell on both sides of the road causing panic among the Bosnian Muslims.[901] At one point on the evening of 10 July, members of the ABiH 28th Division stopped some Bosnian Muslims and asked them to return to Srebrenica

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Boering, Ex. P01461 PT. 1931, 1938 (19 September 2006); PW-071, T. 6057 (closed session) (30 September 2010) (testifying that the people were panic-stricken and just wanted to flee); Adjudicated Facts 101, 103.

898 Evert Rave, T. 6743–6744 (26 October 2010); Evert Rave, Ex. P01004, KT. 857 (20 March 2000); Adjudicated Fact 104. *See also* Mirsada Malagić, T. 10019–10020 (16 February 2011) (describing the scene as "complete chaos and confusion," with shells landing all around, women and children seeking shelter in nearby buildings, shells landing in the midst of crowds, and people being killed and injured).

899 Pieter Boering, Ex. P01461, PT. 1931–1932 (19 September 2006); Ex. P00974, p. 1; Jean-René Ruez, T. 912–913 (29 March 2010); Ex. P00094, p. 9 (map showing the movement of the people from Srebrenica to the UN compound in Potočari); Adjudicated Fact 105. There is evidence that the UN initiated the movement of the Bosnian Muslims from Srebrenica to Potočari. Vincentius Egbers, Ex. P01142, PT. 2879 (20 October 2006); Evert Rave, T. 6858 (27 October 2010); Evert Rave, Ex. P01004, KT. 923 (21 March 2010); Mirsada Malagić, T. 10021 (16 February 2011) (testifying that even though the Bosnian Muslims did not understand the language of the DutchBat soldiers, they were guided by them to Potočari by way of hand signals); Johannes Rutten, Ex. P02629, PT. 4883 (30 November 2006). There is also evidence that the Bosnian Muslims had no alternative but to go to Potočari. Paul Groenewegen, Ex. P00098, BT. 1041 (10 July 2003) (testifying that the Bosnian Muslims did not come to Potočari of their own free will, but because they had no other option); PW-017, Ex. P02883, KT. 1248 (24 March 2000) (testifying that it was necessary for the Bosnian Muslims to leave their homes because everybody who stayed in Srebrenica "ended up dead"); PW-071, T. 6062 (closed session) (30 September 2010) (testifying that not a single Bosnian Muslim would have dared to stay in Srebrenica), T. 8188–8190 (closed session) (29 November 2010); PW-011, Ex. P01513, PT. 3599 (6 November 2006) (testifying that people were leaving Srebrenica because they realised that they would all be killed); PW-073, T. 618 (12 March 2010) (testifying that there was no option of remaining in Srebrenica).

900 Robert Franken, Ex. P00598, PT. 2480 (16 October 2006) (testifying that he issued an order to Groen to withdraw from Srebrenica and guide the tail of Bosnian Muslims in the northern direction in order to stay between the civilians and the Bosnian Serb Forces and that upon arrival in Potočari, DutchBat was ordered to take positions in the southern edge and continue to block any VRS approach); Mirsada Malagić, T. 10021 (16 February 2011). *See also* Ex. P00678 (an UNMO situation report from 4:00 p.m. on 11 July 1995, stating that the Bravo Company had left its compound and was heading for Potočari). DutchBat trucks were sent from Potočari to assist the Bosnian Muslims in the transport. Johannes Rutten, Ex. P02638, KT. 2113, 2181 (5 April 2000). Egbers himself transported about 20 people on his APC. Vincentius Egbers, Ex. P01142, PT. 2882–2883 (20 October 2006).

901 PW-071, T. 6061 (closed session) (30 September 2010) (testifying that shells landed on both sides of the column causing panic); Mirsada Malagić, T. 10021–10022 (16 February 2011) (testifying that the journey was terrible with shells zigzagging from one side to the other and that wounded and elderly people were forced to stay behind on the road as nobody could help them); PW-011, Ex. P01513, PT. 3599, 3632–3633 (6 November 2006) (testifying that there was constant shelling, that many people screamed for help but that nobody looked at each other or helped as they all minded their own business because they wanted to reach Potočari to save themselves); PW-017, Ex. P02883, KT. 1329–1330 (27 March 2000); Evert Rave, T. 6745 (26 October 2010); Evert Rave, Ex. P01004, KT. 858–859 (20 March 2000); Robert Franken, Ex. P00598, PT. 2481 (16 October 2006) (testifying that DutchBat tried to find an alternate route for the people so that they would not be in direct sight of the Serb artillery); Adjudicated Fact 434. Momir Nikolić testified that the column of civilians itself was a target of the 2nd Battalion of the Bratunac Brigade while moving towards Potočari. Momir Nikolić, T. 12370–12371 (6 April 2011). *But see* Robert Franken, Ex. P00598, PT. 2611 (17 October 2006) (testifying that if the Bosnian Serb Forces wanted to kill everybody in the column of civilians, they could have done so); Vincentius Egbers, T. 7120 (1 November 2010) (testifying that the shelling had the purpose of keeping the column moving towards Potočari); Evert Rave, T. 6745–6746 (26 October 2010); Evert Rave, Ex. P01004, KT. 858–859 (20 March 2000) (testifying that the shelling seemed to have been designed to keep the Bosnian Muslims moving along the road to Potočari so that the whole of Srebrenica could be taken).

town.[902] However, on 11 July the 28th Division was not present and so the fleeing Bosnian Muslims were not stopped.[903]

8. Fall of the Srebrenica Enclave (11 July)

234. By the morning of 11 July 1995, the ABiH 28th Division had disappeared from Srebrenica town.[904] While the ABiH further withdrew from its positions flanking the DutchBat posts, the VRS took over the remaining OPs one-by-one,[905] with the exception of OPs Alpha, Charlie, Delta, and Papa, which DutchBat continued to hold.[906]

235. DutchBat's requests for NATO air support to defend Srebrenica were unsuccessful until around 2:30 p.m., when NATO bombed VRS tanks advancing towards the town.[907] Franken then received a message from the VRS that close air support had to stop immediately or the VRS would shell the UN compound including areas where the Bosnian Muslims had taken refuge and it would kill the DutchBat soldiers who were being detained.[908] Franken did not take the threat to kill the DutchBat soldiers very seriously, though he believed that there was a possibility that they would be held as human shields, as had happened elsewhere in BiH.[909] However, he took the other part of the threat very seriously.[910] Very shortly afterwards, there was mortar shelling of the area around the bus station and a full round of a multiple rocket system in the Potočari area, which caused casualties among those who had taken refuge there.[911] In the afternoon, Gvero threatened Nicolai in a

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902 Robert Franken, Ex. P00598, PT. 2583–2584 (17 October 2006).
903 Robert Franken, Ex. P00598, PT. 2583–2584 (17 October 2006).
904 Robert Franken, Ex. P00598, PT. 2479 (16 October 2006).
905 Robert Franken, Ex. P00598, PT. 2478 (16 October 2006). In most of the cases, the DutchBat soldiers were required to hand over their small calibre weapons and were brought eventually to Bratunac, where they were held as POWs. Robert Franken, Ex. P00598, PT. 2479 (16 October 2006). *See infra* para. 246.
906 Robert Franken, Ex. P00598, PT. 2478–2479 (16 October 2006).
907 Robert Franken, T. 3471 (1 July 2010); Adjudicated Fact 109. Franken later heard that although the planes were already in the air by 6:00 a.m. that day, their mission was aborted, which required them to return to their original airfields. Robert Franken, T. 3471, 3480 (1 July 2010). Two F-16s, however, later carried out close air support. Robert Franken, T. 3471, 3480 (1 July 2010); Robert Franken, Ex. P00598, PT. 2485 (16 October 2006). Trivić testified that NATO air strikes took place at approximately 2:00 p.m. in a clearing, striking some command communication and combat vehicles which were moving through the clearing. Mirko Trivić, Ex. P01197, PT. 11832 (21 May 2007), PT. 11971–11972 (23 May 2007); Mirko Trivić, T. 8708–8709 (10 December 2010). The NATO planes also attempted to bomb VRS artillery positions overlooking the town, but due to poor visibility had to abort the operation. Adjudicated Fact 110. *See also* Mevludin Orić, T. 800–801 (22 March 2010) (testifying that he observed NATO air strikes in the afternoon of 11 July 1995). Nicolai testified that owing to the number of aircraft and the terrain the NATO air strikes were not effective and did not stop the advance of the VRS. Cornelis Nicolai, Ex. P00674, PT. 18486 (29 November 2007).
908 Robert Franken, Ex. P00598, PT. 2485 (16 October 2006); Adjudicated Fact 111. *See also* PW-003, Ex. P01509, BT. 6081–6082 (17 December 2003); Cornelis Nicolai, Ex. P00674, PT. 18486–18487, 18513–18517 (29 November 2007). The message was conveyed by a captured DutchBat soldier with communication equipment in a DutchBat APC that was being held by the VRS in Bratunac. Robert Franken, Ex. P00598, PT. 2485 (16 October 2006); Pieter Boering, Ex. P01461, PT. 1928–1929 (19 September 2006).
909 Robert Franken, Ex. P00598, PT. 2485–2486 (16 October 2006), PT. 2611 (17 October 2006).
910 Robert Franken, Ex. P00598, PT. 2486 (16 October 2006), PT. 2611 (17 October 2006). *See also* Cornelis Nicolai; Ex. P00674, PT. 18492 (29 November 2007).
911 Robert Franken, Ex. P00598, PT. 2486 (16 October 2006).

telephone-conversation that if air support were not discontinued, he would be held responsible for all further developments and the destiny of DutchBat and the civilian population in Srebrenica.[912] He further stated that the VRS was not targeting any UN position or the civilian population.[913] UNPROFOR Command ordered the discontinuation of air support because of the risk of further casualties.[914]

236. During the day of 11 July, the 10th Sabotage Detachment entered the town of Srebrenica; they encountered no resistance at all and only saw about 200 civilians who came out of their houses when they were called upon to do so.[915] Late in the afternoon, Mladić, Živanović, Krstić, and other VRS officers took a triumphant walk through the empty streets of Srebrenica town during which they were met by various soldiers, including ones from the 10th Sabotage Detachment, the Drina Wolves, and the 2nd Romanija Brigade.[916]

9. Formation of the Column on the Night of 11 July and its Composition

237. After the fall of the enclave in the afternoon of 11 July 1995, an "order" urging the population to leave Srebrenica was issued and spread by couriers.[917] The "order" was further spread

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912 Ex. P00692; Ex. P00327 (confidential); Cornelis Nicolai, Ex. P00674, PT. 18486–18487, 18489–18492, 18509–18517 (29 November 2007). *See also* Ex. P00678 (an UNMO situation report stating that Srebrenica town was in the hands of the VRS and that the latest ultimatum given by the VRS was that if the air-strikes continued everything inside the enclave would be bombed, including UNPROFOR and the other UN organisations); Robert Franken, Ex. P00598, PT. 2485 (16 October 2006). Later at 6:10 p.m., Gobilliard had a second conversation with Gvero informing him that there were no aircraft over Srebrenica anymore although they still remained at his disposal if they were needed again for defence purposes. Gvero again stated that the VRS had not attacked UNPROFOR or civilians and he promised that he would do his utmost best to keep the situation in Srebrenica under control and suggested another contact by telephone for the following morning. Ex. P00581, pp. 1–2; Louis Fortin, Ex. P00587, PT. 18252–18255 (26 November 2007), PT. 18393 (28 November 2007).

913 Ex. P00692; Ex. P00327 (confidential).

914 Louis Fortin, Ex. P00587, PT. 18261 (27 November 2007); Cornelis Nicolai, Ex. P00674, PT. 18487 (29 November 2007), PT. 18589–18591 (30 November 2007); Adjudicated Fact 111.

915 Dražen Erdemović, Ex. P00215, PT. 10943–10946, 10953 (4 May 2007); Dragan Todorović, Ex. P02588, PT. 14002 (21 August 2007). The few civilians who remained were called to leave their homes and then all of them were sent towards the football field on the other side of Srebrenica town. Dražen Erdemović, T. 1927–1928 (17 May 2010).

916 Erin Gallagher, T. 6665–6668 (21 October 2010); Ex. P00624, pp. 11–17; Ex. P02798, Disc 1, 00:24:30–00:33:15, pp. 7–12; Dragomir Pećanac, T. 18073–18074 (private session) (12 January 2012); Adjudicated Fact 113. Mladić entered Srebrenica with three vehicles, one of which was a Praga, with Mladić travelling in the first vehicle. Dražen Erdemović, Ex. P00215, PT. 10948 (4 May 2007). In the centre of Srebrenica Mladić stated: "Here we are, on 11 July 1995, in Serb Srebrenica. On the eve of yet great Serb holiday, we give this town to the Serb people as a gift. Finally, after the rebellion against the Dahis, the time has come to take revenge on the Turks in this region." Ex. P02798, Disc 1, 00:30:36 to 00:31:00, p. 11. *See also* Ex. P01443 (a map signed by Živanović and approved by Mladić, marked "Military secret, Strictly confidential, Krivaja 95", that displays a crossed-out Srebrenica enclave with the words in Mladić's handwriting "Completed – This was Serbian and it's now Serbian! 12 July 1995 signed by Mladić"); Mirko Trivić, T. 8761 (10 December 2010) (testifying that the cross through Srebrenica on the map was to show that the enclave stopped existing on 12 July 1995 and that the job was finished).

917 Hana Mehmedović, Ex. P01533 (17 June 2000), pp. 2, 4; PW-005, T. 2214–2217 (31 May 2010); PW-005, Ex. P00261, PT. 7080 (8 February 2007); Šehra Ibišević, Ex. P01526 (21 June 2000), p. 4; PW-015, T. 1353–1355 (26 April 2010); PW-015, Ex. P00110, KT. 2943 (14 April 2000); PW-016, T. 9380 (3 February 2011). PW-004 testified that the decision to leave was made by the "people who were in power", *i.e.* the "local municipal employees". PW-004, Ex. P00460, PT. 3211 (30 October 2006); PW-004, T. 2736 (15 June 2010). For some

orally among the population;[918] however, the residents did not perceive it as mandatory but decided themselves to leave in the belief that it would be too dangerous to stay.[919]

238. Whereas most women, children, and elderly and some able-bodied men went to the UN compound in Potočari to seek the protection of UNPROFOR,[920] able-bodied men headed through the woods towards the villages of Jaglići and Šušnjari in the north-west of Srebrenica.[921] At this time, the men heading towards Jaglići and Šušnjari were partly already walking in unorganised groups or columns.[922]

239. Those heading towards Jaglići and Šušnjari arrived there in the course of the evening of 11 July.[923] At approximately 10:00 p.m., the Command of the ABiH 28th Division and the Bosnian Muslim municipal authorities gathered in "Sead's house" in Šušnjari and made the decision to form a column and to walk to Tuzla.[924] The decision was orally communicated and spread among those who had assembled.[925]

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individuals, it was unclear who issued the order. PW-016, T. 9380 (3 February 2011). PW-015 testified that "somebody must have issued an order for the people to leave Srebrenica". In his previous testimony in the *Krstić* case he testified that he had received orders from the civilian structures. PW-015, Ex. P00110, KT. 2943 (14 April 2000); PW-015, T. 1351–1352 (26 April 2010).

[918] PW-023, Ex. P00060, PT. 17303–17304 (1 November 2007); PW-016, T. 9380 (3 February 2011); PW-016, Ex. P01762, KT. 3048 (14 April 2000); PW-005, T. 2214–2217 (31 May 2010); PW-005, Ex. P00261, PT. 7080 (8 February 2007); PW-008, T. 8882, 8889–8891 (14 December 2010). *See also* Adjudicated Fact 117.

[919] PW-014, T. 17744–17747 (8 September 2011); PW-014, Ex. P02617, PT. 3507–3509 (2 November 2006); PW-006, Ex. P02797, PT. 6972 (6 February 2007); PW-008, T. 8889–8890 (14 December 2010). *See also* PW-004, Ex. P00442, KT. 3239 (23 May 2000); PW-071, T. 6061–6062 (closed session) (30 September 2010), T. 8181 (closed session), (29 November 2010).

[920] *See supra* para. 233.

[921] PW-004, T. 2716–2717 (private session) (15 June 2010) (testifying that they saw that DutchBat could not help or save the men); PW-004, Ex. P00442, KT. 3239 (23 May 2000) (stating that they could only expect death at Potočari because they had no protection from UNPROFOR); Hana Mehmedović, Ex. P01533 (17 June 2000), p. 2 (testifying that her husband did not dare to go with her, because he was afraid); PW-016, Ex. P01762, KT. 3016 (14 April 2000) (testifying that he did not dare to go to Potočari because he was afraid that he would be killed); PW-014, T. 17745 (8 September 2011) (testifying that if he went to Potočari it would mean certain death); PW-014, Ex. P02617, PT. 3507–3509 (2 November 2006) (testifying that they were afraid because they believed that the Bosnian Serb Forces wanted to kill them all). *See also* Adjudicated Fact 108; Richard Butler, T. 16613 (13 July 2011); Evert Rave, T. 6860–6861 (27 October 2010); Evert Rave, Ex. P01004, KT. 924 (21 March 2010); Samila Salčinović, Ex. P01524 (18 June 2000), p. 3; Ex. P01176 (a map showing the route taken by the column).

[922] PW-005, Ex. P00261, PT. 7082 (8 February 2007); PW-006, Ex. P02797, PT. 6972 (6 February 2007); PW-014, Ex. P02617, PT. 3507–3508 (2 November 2006); PW-022, Ex. P00097, PT. 3945–3950 (15 November 2006).

[923] Mevludin Orić, Ex. P00069, PT. 871–872 (28 August 2006); PW-004, Ex. P00442, KT. 3241 (23 May 2000); PW-005, T. 2219 (31 May 2010); PW-005, Ex. P00261, PT. 7082 (8 February 2007); PW-007, T. 521–522 (11 March 2010); PW-016, Ex. P01762, KT. 3017 (14 April 2000).

[924] Mevludin Orić, T. 802–803 (22 March 2010); Mevludin Orić, Ex. P00069, PT. 871–872 (28 August 2006); Adjudicated Fact 118. Šušnjari was selected as a gathering point because it was well protected from shelling and observation by the surrounding hills. Mevludin Orić, Ex. P00069, PT. 872 (28 August 2006). Ramiz Bečirović, who was standing in for Naser Orić, issued the order. Mevludin Orić, T. 802–804 (22 March 2010); Mevludin Orić, Ex. P00069, PT. 1049–1051, 1077 (30 August 2006); Richard Butler, T. 16549 (13 July 2011). The organisation of the column lasted almost all night. PW-008, Ex. P01450, BT. 1382 (21 July 2003).

[925] Mevludin Orić, Ex. P00069, PT. 1077 (30 August 2006); PW-015, T. 1362 (26 April 2010); PW-016, Ex. P01762, KT. 3017 (14 April 2000); PW-015, Ex. P00110, KT. 2945 (14 April 2000).

240. The column started moving in the direction of Tuzla during the night of 11 July and in the course of 12 July.[926] It consisted of approximately 10,000 to 16,000 people,[927] and was several kilometres long.[928] The column consisted predominantly of able-bodied men between the ages of 16 and 65 with only a small number of women, children, and elderly.[929] An unknown number of the men from the column were armed.[930] People with weapons were mixed with those who did not have weapons to provide security, but there was a higher concentration of armed persons towards the front of the column.[931] A very large number wore civilian clothes.[932] Medical support was also

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926 PW-008, Ex. P01450, BT. 1382–1383 (21 July 2003); PW-018, Ex. P01173, KT. 3189 (23 May 2000); PW-005, Ex. P00261, PT. 7082–7083 (8 February 2007); Salih Mehmedović, Ex. P01531 (15 June 2000), pp. 2–3; PW-016, Ex. P01762, KT. 3017 (14 April 2000); PW-004, Ex. P00442, KT. 3240–3241 (23 May 2000); Mevludin Orić, Ex. P00069, PT. 874–875 (28 August 2006). *See also* Adjudicated Facts 119, 124; Ex. P00104, p. 7 (map showing the direction of the Bosnian Muslim column indicated by red arrows). Members of the column had the impression that the column was not well organised. PW-004, T. 2737 (15 June 2010); Mevludin Orić, Ex. P00069, PT. 1079 (30 August 2006); PW-004, Ex. P00442, KT. 3241–3242 (23 May 2000) (testifying that nobody led the group, but referring to the presence of the "head of the municipality, those in charge of civilian authority" and the "Territorial Defence").

927 Mevludin Orić, Ex. P00069, PT. 872 (28 August 2006) (testifying that approximately 15,000 people assembled at Šušnjari); PW-016, Ex. P01762, KT. 3017 (14 April 2000) (testifying that a very large crowd of about 10,000–15,000 people had assembled in Jaglići); Momir Nikolić, T. 12590 (11 April 2011) (testifying that between 15,000 to 16,000 people made up the column); PW-004, Ex. P00442, KT. 3240 (23 May 2000) (testifying that when he arrived at Šušnjari there were approximately 12,000 to 15,000 people in the column); PW-007, T. 520–521 (11 March 2010) (reporting estimates that at least 15,000 people assembled at Šušnjari); Salih Mehmedović, Ex. P01531 (15 June 2000), p. 2 (testifying about a huge mass of 10,000 to 12,000 men); PW-015, Ex. P00110, KT. 2944 (14 April 2000) (testifying that approximately 13,000 to 15,000 Bosnian Muslims assembled at Šušnjari); Mirko Trivić, Ex. P01197, PT. 11847–11848 (21 May 2007) (testifying that VRS intelligence briefings estimated that several thousand Bosnian Muslims tried to break through to ABiH-held territory). *See also* Richard Butler, T. 16657, 16670–16671 (14 July 2011); Ratko Škrbić, T. 18974 (8 February 2012).

928 PW-022, T. 1144 (14 April 2010); PW-022, Ex. P00097, PT. 3951 (15 November 2006) (estimating that the column was a couple of kilometres long); PW-015, T. 1362 (26 April 2010) (testifying that the column was from seven to ten kilometres long). *See also* PW-008, Ex. P01449, PT. 3348 (31 October 2006).

929 Osman Salkić, T. 7880–7881 (22 November 2010); PW-015, T. 1363 (26 April 2010); PW-015, Ex. P00110, KT. 2944 (14 April 2000); PW-018, Ex. P01173, KT. 3189 (23 May 2000); PW-014, Ex. P02617, PT. 3510 (2 November 2006); Ex. P00991, 00:33:16–00:36:46. *See also* Adjudicated Facts 125, 126.

930 PW-004, Ex. P00460, PT. 3259 (20 October 2006); PW-015, Ex. P00110, KT. 2944 (14 April 2000). *See also* Adjudicated Fact 120; Ratko Škrbić, T. 18974 (8 February 2012); Osman Salkić, T. 7866, 7878 (22 November 2010) (testifying that approximately 1,000 of the first group of 3,000 men in the column who conducted reconnaissance had rifles). When shown video segments, Salkić said that he could see in them that elsewhere in the column, only one in five or six persons had a weapon. Osman Salkić, T. 7889–7890 (22 November 2010); Ex. P00991, 00:13:57–00:14:51, 00:33:18–00:35:05. *Cf.* PW-006, Ex. P02797, PT. 7033–7034 (7 February 2007) (who testified that there were a "large number" of members of the ABiH in the column, and a "substantial number" had weapons of various kinds). Both hunting weapons and automatic and semi-automatic rifles were seen. PW-014, Ex. P02617, PT. 3512 (2 November 2006); Mevludin Orić, T. 867 (25 March 2010). With regard to the nature of ABiH membership in Srebrenica, Butler testified that the ABiH 28th Division was larger in manpower than the amount of weapons that the units had available and that, therefore, the weapons were rotated according to which group of soldiers was on duty. Butler further testified that there were, therefore, three categories of Bosnian Muslim men: armed members of the ABiH, unarmed members of the ABiH, and able-bodied men without any association with the military. Richard Butler, T. 16637–16638 (14 July 2011). *See also* Momir Nikolić, T. 12576–12578 (11 April 2011). The VRS estimated that the armed men organised in the ABiH 28th Division in Srebrenica at that time amounted to around 10,000 soldiers, whereas the DutchBat estimates were between 3,000 and 4,000 men. Milenko Lazić, Ex. P02733, PT. 21735 (4 June 2008); Mirko Trivić, Ex. P01197, PT. 11881 (21 May 2007); Johannes Rutten, Ex. P02638, KT. 2164 (5 April 2000). *See also* Ex. P01202, pp. 1–2; Ex. D00207.

931 PW-004, Ex. P00442, KT. 3241–3242 (23 May 2000); PW-007, T. 524 (11 March 2010); PW-008, Ex. P01450, BT. 1383 (21 July 2003); PW-008, Ex. P01449, PT. 3348 (31 October 2006); PW-014, Ex. P02237 (confidential), PT. 3574 (private session) (3 November 2006); Osman Salkić, T. 7866, 7878, 7889–7890 (22 November 2010).

932 PW-004, Ex. P00460, PT. 3259 (30 October 2006); Ex. P00991, 00:33:16–00:36:46.

present.[933] Reconnaissance troops as well as mine and explosives experts left first.[934] The column followed a path marked with scraps of paper in order to avoid landmines.[935]

B. Potočari

1. Humanitarian Situation in Potočari (11–13 July)

241. On 11 July 1995, following the fall of Srebrenica,[936] a large influx of Bosnian Muslims—mostly women, children, and elderly—created a chaos[937] in Potočari as they arrived terrified and seeking assistance from DutchBat.[938] DutchBat soldiers first directed them to a large bus complex outside of the compound.[939] As larger groups began arriving, DutchBat allowed them into the compound through a hole in the fence[940] and directed them to take shelter there.[941] When they were unable to accommodate more, access to the UN compound was closed.[942] The remainder of the crowd and those still arriving[943] congregated in nearby factories,[944] and many spent the evenings outside.[945] By the end of 12 July 1995, approximately 25,000–30,000 Bosnian Muslims had gathered in and around the compound.[946]

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933 PW-022, Ex. P00096 (confidential), PT. 4025–4027, 4056-4057 (private session) (16 November 2006).

934 Mevludin Orić, T. 805–806 (22 March 2010); PW-022, Ex. P00096 (confidential), PT. 4027 (private session) (16 November 2006); Osman Salkić, T. 7878 (22 November 2010). PW-008 testified that he heard that cattle went in front of the column in order to activate the mines. PW-008, Ex. P01449, PT. 3384 (31 October 2006).

935 PW-014, Ex. P02237 (confidential), PT. 3574–3575 (private session) (3 November 2006).

936 *See supra* paras. 235–237.

937 PW-003, Ex. P01509, BT. 6082 (17 December 2003); Eelco Koster, Ex. P01483, PT. 3102 (26 October 2006).

938 *See, e.g.*, Ex. P01485, pp. 2, 4; Mendeljev Đurić, Ex. P01620, PT. 10807–10808 (2 May 2007); Samila Salčinović, Ex. P01524 (18 June 2000), p. 2; Šehra Ibišević, Ex. P01526 (21 June 2000), p. 2; Mevlinda Bektić, Ex. P01534 (16 June 2000), pp. 1–2; Salih Mehmedović, Ex. P01531 (15 June 2000), p. 2; PW-005, T. 2215 (31 May 2010). *See also* Adjudicated Facts 433, 442.

939 Ex. P01485, p. 3; PW-017, Ex. P02883, KT. 1248–1249 (24 March 2000). *See also* Robert Franken, Ex. P00598, PT. 2483 (16 October 2006); Ex. P00616; Jean-René Ruez, T. 914, 962–963 (29 March 2010); Ex. P00094, p. 10; Ex. P01344 (marked by Tomasz Blaszczyk identifying the Ekspres bus complex with a number one, the zinc factory with a number two, the blue building with a number three, the Feros building with a number four, the blue factory with a number five, and the white house with a number six. Ex. P01344; Tomasz Blaszczyk, T. 7576–7578 (10 November 2010); Ex. P00083, 00:00:37–00:01:07 (video-clip on Potočari commented on by Jean-René Ruez, T. 962–963 (29 March 2010)).

940 The hole was made as a safer route given previous firing on the main gate. Ex. P01485, p. 3; Johannes Rutten, Ex. P02638, KT. 2108, 2110–2111 (5 April 2000); Johannes Rutten, T. 17808 (12 September 2011); PW-002, Ex. P01497, KT. 1508 (28 March 2000).

941 Robert Franken, Ex. P00598, PT. 2484 (16 October 2006).

942 Eelco Koster, Ex. P01483, PT. 3101 (26 October 2006); Johannes Rutten, Ex. P02638, KT. 2113 (5 April 2000); Mirsada Malagić, T. 10023 (16 February 2011).

943 Hana Mehmedović, Ex. P01533 (17 June 2000), pp. 2, 4; PW-011, Ex. P01513, PT. 3600 (6 November 2006); Mendeljev Đurić, Ex. P01620, PT. 10805, 10807–10808 (2 May 2007) (testifying about civilians arriving on 12 July).

944 PW-023, Ex. P00060, PT. 17304, 17306–17307 (1 November 2007); Mirsada Malagić, T. 10023 (16 February 2011); PW-012, Ex. P01518, PT. 3309 (31 October 2006); Robert Franken, Ex. P00598, PT. 2485 (16 October 2006); Paul Groenewegen, Ex. P00098, BT. 1020 (10 July 2003); Adjudicated Fact 435.

945 PW-073, Ex. P00048 (confidential), pp. 5–6, 63–64; Behara Krdžić, Ex. P02743 (16 June 2000), p. 2; Šehra Ibišević, Ex. P01526 (21 June 2000), p. 4; Paul Groenewegen, Ex. P00098, BT. 1021 (10 July 2003); PW-003, Ex. P01509, BT. 6083 (17 December 2003); Adjudicated Fact 435.

946 Ex. P00678 (estimated 20,000 and growing on 11 July 1995); Ex. P00589, p. 3 (estimated 25,000 displaced persons by the end of 11 July); Ex. P01335, p. 2 (estimated 25,000–28,000 in Potočari on 12 July); Ex. P02238,

242. The humanitarian situation in Potočari over the course of 11–13 July 1995 was indescribable and rapidly deteriorated.[947] Amidst unbearable heat,[948] there was very little water or food for the large mass of people.[949] There was a drastic shortage of medical supplies for those needing medical assistance.[950] The hygienic situation was described as "disastrous".[951] Deputy Commander of DutchBat, Major Robert Franken, observed that the Bosnian Muslims looked completely exhausted, lethargic, and "as if the world had stopped for them".[952]

243. At the same time, the Bosnian Muslims in Potočari were in constant fear. After some shelling in the surrounding area of Potočari in the evening of 11 July 1995,[953] there was relative calm.[954] However, given anxiety, many could not sleep.[955] The fear increased as the Bosnian Serb Forces arrived in the town on the morning of 12 July 1995 and intimidated the Bosnian Muslims.[956] Members of Bosnian Serb Forces took men away throughout the day on 12 July[957] and the sounds of moaning and beating could be heard.[958] Some of the men never returned.[959]

244. The night of 12–13 July 1995 was described as "hell".[960] The sleepless crowd heard the masses crying, moaning, and screaming.[961] Gunshots pierced the evening and members of the

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p. 1 (estimated 25,000–30,000); Ex. P02526 (estimated 30,000 with 8,000 more to arrive); Momir Nikolić, T. 12614 (12 April 2011) (estimated 30,000 people before the transportation started on 12 July); PW-073, Ex. P00048 (confidential), p. 5 (estimated over 30,000); Ex. P02069, p. 2 (estimating about 30,000–35,000 by the end of 12 July). *See also* Johannes Rutten, Ex. P02638, KT. 2113 (5 April 2000) (testifying that already 4000–5000 had arrived at the compound by the late afternoon of 11 July); Ex. P01485, pp. 4–5 (estimated 4,000–5,000 inside the UN compound and approximately 15,000 outside of the compound); Adjudicated Fact 111 (20,000–30,000 had fled to Potočari); Adjudicated Fact 435 (estimated 20,000–25,000 by the end of 11 July); Adjudicated Fact 437 (estimate of 20,000–30,000 refugees outside the UNPROFOR compound).

947 PW-017, Ex. P02883, KT. 1254 (24 March 2000); Ex. P02526; Robert Franken, Ex. P00598, PT. 2511 (16 October 2006); Ex. P00608, p. 2; Ex. P00979.

948 PW-002, Ex. P01497, KT. 1510 (28 March 2000); Mile Janjić, Ex. P01096, BT. 9772 (24 May 2004); Robert Franken, Ex. P00598, PT. 2511 (16 October 2006). *See also* Adjudicated Fact 436.

949 Ex. P02577; Robert Franken, Ex. P00598, PT. 2511 (16 October 2006); Eelco Koster, Ex. P01483, PT. 3113 (27 October 2006); Ex. P01485, p. 6; PW-002, Ex. P01497, KT. 1510 (28 March 2000); Ex. P00974, p. 4; Ex. P00609, p. 4; Ex. P00608, p. 2; Pieter Boering, Ex. P01461, PT. 1939–1940 (21 September 2006); Adjudicated Fact 436.

950 Ex. P02577; Robert Franken, Ex. P00598, PT. 2511 (16 October 2006); Ex. P01485, pp. 5, 12; Ex. P00974, p. 4; Ex. P00609, p. 4; Adjudicated Fact 438.

951 Robert Franken, Ex. P00598, PT. 2511 (16 October 2006). *See also* Ex. P00608, p. 2; Adjudicated Fact 438.

952 Robert Franken, Ex. P00598, PT. 2489 (16 October 2006).

953 Eelco Koster, Ex. P01483, PT. 3044–3045 (26 October 2006); Ex. P01485, p. 6; Mirsada Malagić, T. 10024 (16 February 2011); PW-073, Ex. P00048 (confidential), pp. 5–6, 51–52; PW-017, Ex. P02883, KT. 1249–1250 (24 March 2000); Behara Krdžić, Ex. P02743 (16 June 2000), p. 2; Ex. P00975; Ex. P00608, p. 1.

954 PW-012, Ex. P01518, PT. 3309 (31 October 2006); Eelco Koster, Ex. P01483, PT. 3102 (26 October 2006); PW-073, Ex. P00048 (confidential), p. 7; Mirsada Malagić, T. 10023 (16 February 2011).

955 PW-012, Ex. P01518, PT. 3309 (31 October 2006); Mirsada Malagić, T. 10024 (16 February 2011); PW-017, Ex. P02883, KT. 1250 (24 March 2000).

956 *See infra* paras. 262–267.

957 Hana Mehmedović, Ex. P01533 (17 June 2000), pp. 2, 4; Mirsada Malagić, T. 10026–10029 (16 February 2011); PW-012, Ex. P01518, PT. 3310–3311 (31 October 2006); Adjudicated Fact 443.

958 PW-073, Ex. P00048 (confidential), pp. 7–8; Mirsada Malagić, T. 10032 (16 February 2011); Hana Mehmedović, Ex. P01533 (17 June 2000), p. 4.

959 Šehra Ibišević, Ex. P01526 (21 June 2000), p. 3; PW-012, Ex. P01518, PT. 3310–3311 (31 October 2006); Mirsada Malagić, T. 10029 (16 February 2011); Adjudicated Fact 443.

960 PW-073, Ex. P00048 (confidential), pp. 7–8, 64–65 (quotation at p. 8). *See also* Mirsada Malagić, T. 10031–

Bosnian Serb Forces continued to take Bosnian Muslim males away.[962] There were accounts of Bosnian Muslim men killed by Bosnian Serb Forces on both 12 and 13 July.[963] The conditions were so dire that several seeking refuge in Potočari committed suicide or attempted to do so.[964] By the morning of 13 July, everyone was desperate to leave Potočari.[965]

2. Hotel Fontana Meetings (11–12 July)

245. Against the backdrop of these events in Potočari, three meetings were held at the Hotel Fontana in Bratunac on the evening of 11 and morning of 12 July.[966] The purpose of these meetings, as discussed in more detail below, was to discuss the fate of the Bosnian Muslim population which by that time had gathered in and around the UN compound in Potočari.[967]

246. At approximately 8:00 p.m. on 11 July 1995, VRS and DutchBat officers held the first meeting.[968] Attending on behalf of the VRS were then Colonel General Mladić, Major General Milenko Živanović, Colonel Radoslav Janković,[969] Lieutenant Colonel Svetozar Kosorić and Major Momir Nikolić, who provided security at Hotel Fontana.[970] DutchBat was represented by

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10032 (16 February 2011); PW-012, Ex. P01518, PT. 3311 (31 October 2006).

961 Mirsada Malagić, T. 10032 (16 February 2011); PW-017, Ex. P02883, KT. 1254 (24 March 2000); Šehra Ibišević, Ex. P01526 (21 June 2000), p. 5; PW-012, Ex. P01518, PT. 3311 (31 October 2006); Adjudicated Fact 443.

962 PW-073, Ex. P00048 (confidential), p. 7; Mirsada Malagić, T. 10031–10032 (16 February 2011); Šehra Ibišević, Ex. P01526 (21 June 2000), p. 5; Hana Mehmedović, Ex. P01533 (17 June 2000), pp. 2, 4 (adding that some feared that young women would be taken away and raped); Adjudicated Fact 443.

963 *See, e.g.,* Pieter Boering, Ex. P01461, PT. 2012–2013 (22 September 2006) (report of men being taken behind the White House and the sounds of shots fired); Mirsada Malagić, T. 10032 (16 February 2011) (report of six murdered children in a nearby cornfield); Mevlinda Bektić, Ex. P01534 (16 June 2000), p. 4 (report of terrible noises coming from a nearby house and blood on the windows). *See also* PW-066, Ex. P01734 (confidential), PT. 17871–17873 (closed session) (19 November 2007) (report of more than ten male corpses in different locations in Potočari several days after the fall of Srebrenica); Adjudicated Fact 439 ("On 12 and 13 July, upon the arrival of Serb forces in Potočari, the Bosnian Muslim refugees taking shelter in and around the compound were subjected to a terror campaign comprised of threats, insults, looting and burning of nearby houses, beatings, rapes, and murders").

964 Mirsada Malagić, T. 10032–10033 (16 February 2011); Eelco Koster, Ex. P01483, PT. 3069–3071, 3095 (26 October 2006); Ex. P01485, p. 15; Robert Franken, Ex. P00598, PT. 2511–2512 (16 October 2006). There were some deaths at the compound and DutchBat attempted to keep a register of the dead. Eelco Koster, Ex. P01483, PT. 3069–3071 (26 October 2006); Adjudicated Fact 444.

965 Mirsada Malagić, T. 10033 (16 February 2011); PW-063, Ex. P00867, PT. 9316 (23 March 2007); Rupert Smith, T. 11828–11829 (24 March 2011); Ex. P00589, p. 2.

966 *See* Adjudicated Facts 156, 168, 180.

967 *See* Adjudicated Fact 159.

968 Pieter Boering, Ex. P01461, PT. 1941 (21 September 2006); Richard Butler, T. 16668–16669 (14 July 2011). *See also* Adjudicated Fact 156. While Mladić said to Karremans that Karremans asked for a meeting, according to Rave, Karremans was ordered by Mladić to come to the Hotel Fontana. Ex. P02798, Disc 1, 00:42:55, p. 17; Evert Rave, Ex. P01004, KT. 860, 881 (20 March 2000).

969 The Chamber notes that on or about 8 July 1995, Radoslav Janković took over Momir Nikolić's liaison duties with UNPROFOR. *See supra* n. 428.

970 Evert Rave, Ex. P01004, KT. 862–863 (20 March 2000); Pieter Boering, Ex. P01461, PT. 1942–1943 (21 September 2006). *See also* Adjudicated Facts 161, 162. Momir Nikolić testified that he had been assigned the task of securing the Hotel Fontana together with the commander of the MP of the Bratunac Brigade, Sergeant Mirko Janković, while the meetings took place and although he was not a direct participant in the meetings, was close enough to see what was going on and hear what was being said. Momir Nikolić, T. 12371–12373, 12376 (6 April 2011).

Lieutenant Colonel Thomas Karremans, Major Pieter Boering, and Sergeant Major Evert Rave.[971] Also present was a camera team, and a UN interpreter named Petar Ušćumlić.[972] Upon their arrival at the hotel, the DutchBat officers saw several of their soldiers, who had previously withdrawn from observation points in the Zeleni Jadar sector and had surrendered to Bosnian Serb Forces,[973] held as prisoners in a room in the hotel.[974] The soldiers told Boering that they did not have any freedom to move and felt threatened, but were taken care of.[975]

247. Mladić, who led the meeting,[976] conducted the conversation in an intimidating and dominant manner.[977] He repeatedly asked Karremans who had ordered the air strikes and fired at VRS soldiers[978] and shouted at him.[979] Mladić suggested that if there were more air strikes against the VRS soldiers, the lives of the DutchBat soldiers held at the Hotel Fontana would be at risk,[980] and the VRS would shell the UN compound in Potočari where refugees had already started gathering.[981] He told Karremans that he did not want the DutchBat officers to go back home in coffins,[982] and demanded that DutchBat fully cooperate if they did not want "to lose [their life] here".[983] Mladić further told Karremans that both DutchBat and the Bosnian Muslim population can "all leave, all stay, or all die here".[984] It is in the context of this threatening atmosphere that the fate of the Bosnian Muslim population in Potočari was to be discussed.

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971 Pieter Boering, Ex. P01461, PT. 1941 (21 September 2006); Evert Rave, Ex. P01004, KT. 860, 862 (20 March 2000); Momir Nikolić, T. 12372 (6 April 2011). *See also* Adjudicated Fact 157.

972 Evert Rave, Ex. P01004, KT. 862–863 (20 March 2000) (testifying that there were some other civilians present at the meeting but that they were unknown to him). Prior to the meeting, when Mladić first saw Petar Ušćumlić and only heard his last name, he shouted at him and threw him out because he thought that Ušćumlić was a Bosnian Muslim. Momir Nikolić, T. 12372 (6 April 2011).

973 Ex. P02515, p. 1. *See also* Evert Rave, T. 6774–6776 (26 October 2010) (testifying that the soldiers were captured on 10 July 1995); Ex. P00994, p. 5.

974 Pieter Boering, Ex. P01461, PT. 1942 (21 September 2006). *See also* Adjudicated Fact 158. According to Richard Butler, approximately 20–25 or even more DutchBat soldiers in total were held at Hotel Fontana at that time. Richard Butler, T. 16570 (13 July 2011).

975 Pieter Boering, T. 9008–9009 (15 December 2010).

976 Evert Rave, T. 6749–6750 (26 October 2010). *See also* Adjudicated Fact 160.

977 Pieter Boering, Ex. P01461, PT. 1945–1946 (21 September 2006); Evert Rave, T. 6749–6750 (26 October 2010). Evert Rave, T. 6917, 6919 (28 October 2010). *See also* Adjudicated Fact 160.

978 Ex. P02798, Disc 1, 00:33:26, 00:35:29, 00:36:04, 00:38:25, 00:39:10, pp. 13–15. *See also* Evert Rave, Ex. P01004, KT. 866 (20 March 2000).

979 Ex. P02798, Disc 1, 00:39:10, 00:39:31, 00:39:41, 00:40:06. pp. 15–16.

980 Ex. P02798, Disc 1, 00:47:48, p. 19. *See also* Ex. P00678 (an UNMO report dated 11 July 1995 referring to the VRS threat that UNPROFOR and other UN organisations will be bombed if NATO air strikes continue); Ex. P00622, p. 1. As a consequence of this threat, the UN immediately withdrew from using air strikes, thereby abandoning every possibility of defending the enclave. Richard Butler, T. 16574–16575, 16577 (13 July 2011).

981 Evert Rave, T. 6749–6750 (26 October 2010) (testifying that "somewhere in the meeting"—while not recorded on the footage—Mladić threatened that if there were more air strikes, the VRS would target the UN compound and the refugees as well as the DutchBat soldiers detained at Hotel Fontana). *See also* Ex. P00608, p. 4 (a fax from by Karremans sent to UNPROFOR superiors on 12 July, reporting on the discussions held at the three Hotel Fontana meetings).

982 Ex. P02798, Disc 1, 01:00:54, p. 26.

983 Ex. P02798, Disc 1, 00:59:59–0:00:22, p. 26.

984 Ex. P02798, Disc 1, 01:01:38, p. 27. *See* Evert Rave, T. 6917–6919 (28 October 2010). *See also* Adjudicated Fact 164.

248. Karremans stated during the meeting that he had spoken with UNPROFOR's Chief of Staff Brigadier General Nicolai and also the "national authorities" in Sarajevo "about the request on behalf of the population".[985] He reported that the UNPROFOR Command in Sarajevo considered the enclave as lost;[986] that he had been ordered to take care of the "refugees" in Potočari;[987] that he was to negotiate and ask for the conditions of a withdrawal of DutchBat soldiers and these "refugees";[988] and that the Command had asked him to request the VRS whether it could assist the withdrawal.[989] Karremans explained that the Bosnian Muslims at Potočari were sick, tired, and very scared[990] and requested the VRS for humanitarian support as DutchBat itself was short of supplies.[991] He informed Mladić of the approximately 80 wounded Bosnian Muslims at the UN compound in Potočari.[992]

249. Mladić stated that UNPROFOR soldiers and the Bosnian Muslim population were not the objective of VRS operations.[993] He stated that he wanted to "help" them[994] and asked Karremans whether Karremans could arrange buses from UNPROFOR to "evacuate" the Bosnian Muslims, to which Karremans responded that it could be arranged.[995] Mladić told Karremans that he was willing to receive the wounded Bosnian Muslims for treatment in Bratunac.[996] Mladić then told Karremans to bring representatives of the Bosnian Muslim population and the ABiH[997] to a second meeting to be held later in the evening of 11 July 1995 so that arrangements could be made to resolve the "issues of civilian population, your soldiers and the Muslim military" in a "peaceful way".[998] Mladić allowed the DutchBat officers to talk to their detained soldiers at the hotel.[999]

250. As requested by Mladić,[1000] the second meeting took place at approximately 11:00 p.m. on 11 July 1995.[1001] Mladić again presided at the meeting.[1002] He was accompanied by Radoslav

985 Ex. P02798, Disc 1, 00:43:00, p. 17.
986 Ex. P02798, Disc 1, 00:43:49, p. 17.
987 Ex. P02798, Disc 1, 00:44:04, p. 17.
988 Ex. P02798, Disc 1, 00:44:30–00:44:42, p. 17.
989 Ex. P02798, Disc 1, 00:44:43, p. 17.
990 Ex. P02798, Disc 1, 00:45:30, p. 18.
991 Ex. P02798, Disc 1, 00:45:37–00:46:12, p. 18.
992 Ex. P002798, Disc 1, 01:06:08–01:06:47, pp. 29–30.
993 Ex. P02798, Disc 1, 00:59:37, 01:00:23, p. 26. According to Rave, Mladić also stated at this meeting that if the ABiH leaders surrendered, they would not face any problems and would be taken as POWs. Evert Rave, Ex. P01004, KT. 866 (20 March 2000).
994 Ex. P02798, Disc 1, 01:00:34, 01:04:45, p. 26.
995 Ex. P02798, Disc 1, 01:10:05-01:10:23, p. 32; Evert Rave, Ex. P01004, KT. 867 (20 March 2000). *See also* Adjudicated Fact 178.
996 Ex. P002789, Disc 1, 01:06:48–01:06:51, p. 30.
997 Ex. P02798, Disc 1, 01:01:17–01:01:22, 01:01:54–01:02:05, pp. 26–27; Evert Rave, Ex. P01004, KT. 866–867 (20 March 2000).
998 Ex. P02798, Disc 1, 01:02:34–01:02:47, p. 27.
999 Ex. P02798, Disc 1, 01:12:14, p. 33. The detained DutchBat soldiers were however not allowed to leave the hotel. Evert Rave, T. 6911 (28 October 2010); Richard Butler, T. 16571 (13 July 2011).
1000 Ex. P02798, Disc 1, 01:09:51, p. 32.

Janković, Kosorić, and this time Major General Radoslav Krstić, replacing Živanović; Momir Nikolić provided security.[1003] Karremans again attended the meeting with Boering and Rave.[1004] Nesib Mandžić, at the time a school teacher from Srebrenica[1005] found by Karremans and Boering in the crowd of Bosnian Muslims in Potočari, accompanied DutchBat to the meeting as an unofficial representative of the Bosnian Muslim population.[1006] The UN interpreter was also present.[1007]

251. For a short time during the first minutes of the meeting, the shrieking of a pig that was being slaughtered was heard.[1008] A Bosnian Serb bodyguard opened the curtains and the window for this period of time and closed it when the pig stopped shrieking.[1009] Kosorić and other Bosnian Serb persons at the meeting were smiling while the pig was shrieking; Rave had the impression that the slaughtering had been arranged.[1010] Rave perceived the slaughtering of the pig to be intended as intimidation against the Bosnian Muslims.[1011]

1001 Momir Nikolić, T. 12657 (12 April 2011); Pieter Boering, Ex. P01461, PT. 1951 (21 September 2006); Richard Butler, T. 16617 (13 July 2011), T. 16669 (14 July 2011). *See also* Adjudicated Fact 168.

1002 Evert Rave, Ex. P01004, KT. 885 (21 March 2000). *See also* Adjudicated Fact 169.

1003 Evert Rave, Ex. P01004, KT. 884 (21 March 2000); Pieter Boering, Ex. P01461, PT. 1951–1952 (21 September 2006). *See also* Ex. P01133; Ex. P01134; Ex. P01135; Ex. P01390. *See also* Adjudicated Facts 169, 170. *See also* Momir Nikolić, T. 12371–12373 (6 April 2011) (provided security at the second Hotel Fontana meeting).

1004 Evert Rave, Ex. P01004, KT. 883 (21 March 2000); Pieter Boering, Ex. P01461, PT. 1951 (21 September 2006). *See also* Ex. P01131; Ex. P01132.

1005 The evidence suggests that in 1992, Mandžić was a member of the Patriotic League, a group that established itself in 1991, and from which the Žepa Brigade was formed in January of 1993. Ex. D000119 (confidential), p. 1; Dragan Todorović, T. 17548–17549 (1 September 2011); Ljubomir Obradović, T. 12128–12129 (31 March 2011); PW-013, T. 9969 (16 February 2011). Mandžić ceased to be a member of the ABiH in the spring of 1993 and became involved in political activities in Srebrenica. Ex. D00119 (confidential), pp. 3–4.

1006 Evert Rave, Ex. P01004, KT. 883 (21 March 2000) (testifying that they knew Mandžić because they had visited him several times before at the secondary school in Srebrenica, and they thought he would be a good representative). Karremans is recorded stating that it was hard to find a representative of the Bosnian Muslims, but they were glad to find Mr. Mandžić. *See* Ex. P02798, Disc 1, 01:12:42, p. 34. Boering stated that they were not able to find any ABiH commanders in the crowd at Potočari but that he proposed a school teacher whom he had met a few times before. Ex. P01465, p. 8. In a statement given to the Prosecution in October 1995, Rutten stated that from March 1995 onwards, when patrolling the enclave, he would speak to "BH leaders" Mandžić and Šabanović, on a weekly basis. He described Mandžić as "the BH leader in charge of the northern part of the enclave". Ex. P02634, p. 2. *See also* Ex. P00608, p. 4 (a fax from by Karremans sent to UNPROFOR superiors on 12 July the discussions at the three Hotel Fontana meetings, in which Karremans states, *inter alia,* that upon Mladić's request that a representative of the "refugees" should attend the second meeting, Karremans "found one, although he is not an official representative"). *See also* Ex. D00119 (confidential), p. 8. *See also* Adjudicated Fact 172.

1007 Pieter Boering, Ex. P01461, PT. 1953–1954 (21 September 2006); Ex. P00965. Also present were the camera team and some other civilians. Rave recognised one of the civilians to be Ljubislav Simić, a former colleague of Mandžić and mayor of Bratunac. Evert Rave, Ex. P01004, KT. 884 (21 March 2000). Boering testifies that two or three civilians were present who worked for the police or Bratunac authorities. Pieter Boering, Ex. P01461, PT. 1952 (21 September 2006).

1008 Ex. P02798, Disc 1, 01:14:22–01:14:47, p. 34; PW-071, T. 6074 (closed session) (30 September 2010); Pieter Boering, Ex. P01461, PT. 1953 (21 September 2006); Evert Rave, Ex. P01004, KT. 885 (21 March 2000). *See also* Adjudicated Fact 173.

1009 Evert Rave, Ex. P01004, KT. 885–886 (21 March 2000).

1010 Evert Rave, T. 6752–6753 (26 October 2010). There is evidence that on 10 July 1995, "[p]ermission is granted for the slaughter and delivery [of a hog] for the needs of the UN soldiers billeted in the hotel in Bratunac".

252. At this meeting, Karremans reiterated the deteriorating situation in the UN compound in Potočari,[1012] explaining that the Bosnian Muslims who had gathered there by the evening of 11 July—which he approximated to be between 15,000 and 20,000,[1013] the majority comprising women, children and elderly[1014]—were in dire need of food and medicine.[1015] The need for the evacuation of the wounded was also discussed.[1016] While Karremans was talking, Mladić ordered his subordinates to put a broken sign which had been removed from the Municipal Assembly Building in Srebrenica on the table, stating that he had personally taken it from Srebrenica earlier that day.[1017] This was interpreted as an intention to demoralise the Bosnian Muslim representative, as it signified the fall of Srebrenica.[1018]

253. Karremans then explained that he had made attempts to arrange for buses through UNHCR, civil authorities[1019] as well as through his own military authorities, but that he did not know what was possible yet.[1020] He further stated that DutchBat did not have sufficient amounts of fuel supplies.[1021] He told Mladić that DutchBat was in the process of determining the exact number of Bosnian Muslims in the UN compound and where they would like to go,[1022] and stated that DutchBat would make a plan for the "evacuation" of the sick and the elderly first.[1023]

254. Mandžić, who was next given an opportunity to speak, emphasised that he was not an official representative of the Bosnian Muslim authorities,[1024] and was not prepared for the meeting.[1025] He explained that there were far more Bosnian Muslims in Potočari than first estimated and more expected to arrive during the night, not only from Srebrenica but from other municipalities as well; he asked whether there was an agreement made at a higher level about the

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Ex. D00037. Rave doubted whether the POWs held at Hotel Fontana were able to order food as they wanted. Evert Rave, T. 6771 (26 October 2010).

1011 Evert Rave, T. 6753, 6756–6757 (26 October 2010). *See also* PW-071, T. 6077 (closed session) (30 September 2010).

1012 Ex. P02798 Disc 1, 01:15:16, p. 35. Karremans told Mladić that these people were undernourished, that many were sick, and that the area was dirty and infected with flees. *See* Ex. P02798, Disc 1, 01:15:16–01:15:50, 01:16:13–01:16:35, p. 35.

1013 Ex. P02798, Disc 1, 01:14:05, p. 34.

1014 Ex. P02798, Disc 1, 01:15:53, p. 35.

1015 Ex. P02798, Disc 1, 01:18:22–01:18:33, p. 36.

1016 Ex. P02798, Disc 1, 01:21:08–01:21:19, p. 38; Evert Rave, T. 6891–6893 (27 October 2010); Evert Rave, Ex. P01004, KT. 888 (21 March 2000).

1017 Ex. P02798, Disc 1, 01:20:12, p. 37; 01:22:22–1:22:55, pp. 37–38. *See also* Adjudicated Fact 174. The sign was placed on the desk in front of Mandžić. Ex. P02798, Disc 1, 01:31:01, p. 38; Ex. P01136.

1018 Pieter Boering, Ex. P01461, PT. 1960 (21 September 2006). Boering testified that it signified that the Bosnian population were "no longer in charge in [their] city". *Ibid. See also* Annex C: Confidential Annex.

1019 Ex. P02798, Disc 1, 01:26:28, p. 40.

1020 Ex. P02798, Disc 1, 01:27:25–01:27:40, pp. 40–41.

1021 Ex. P02798, Disc 1, 01:24:38, p. 39. Karremans stated that DutchBat had not received any fuel supplies since 16 February 1995, and that it only had about 4,000–5,000 litres of fuel left. *Ibid.*

1022 Ex. P02798, Disc 1, 01:26:56, 01:27:47, pp. 40–41.

1023 Ex. P02798, Disc 1, 01:28:32–01:27:33, p. 41.

1024 Ex. P02798, Disc 1, 01:30:36, p. 42.

1025 Ex. P02798, Disc 1, 01:32:37, p. 42.

planned evacuation.[1026] Mladić told Mandžić that the ABiH soldiers needed to lay down their weapons, guaranteed that those who comply "will live",[1027] and repeated that neither the Bosnian Muslim population, nor international humanitarian organisations or UNPROFOR were his targets.[1028] Next, he demanded a clear position of the Bosnian Muslims on whether they wanted to "survive, stay or vanish"[1029] and expected an official Bosnian Muslim delegation at 10:00 a.m. on the following morning, 12 July 1995, to discuss the "salvation" of the Bosnian Muslims of the Srebrenica enclave.[1030] Until that time, stated Mladić, he would order a cessation of operations.[1031] The issues of food, medicine, and time schedules for the transportation of the Bosnian Muslim population from Potočari were discussed without reaching a detailed decision.[1032] Mladić stated that should his demands not be met, the VRS would resume shelling.[1033]

255. At the end of the meeting, Mladić told Mandžić that the Bosnian Muslim population was in Mandžić's hands, "not only in this territory".[1034] Despite Mandžić's repeated emphasis on the fact that he was chosen as a representative by chance,[1035] Mladić told Mandžić that "[t]hat is your problem" and that he should "[b]ring the people who can secure the surrender of weapons and save [his] people from destruction."[1036] After the meeting, Mandžić was very nervous and Franken helped him to try to contact a member of the BiH government but they did not succeed.[1037]

256. Early next morning on 12 July, Mandžić managed to find two other unofficial representatives of the Bosnian Muslim population amongst the crowd in Potočari, Čamila Omanović and Ibro Nuhanović, to accompany him to the third Hotel Fontana meeting.[1038]

257. The Chamber has heard evidence that before the start of this third meeting, Momir Nikolić, Chief of Intelligence and Security of the Bratunac Brigade, had an occasion to speak to Popović and Kosorić, the respective Chiefs of Security and Intelligence of the Drina Corps; Popović told them that an agreement had already been reached to "evacuate" the women, children, and elderly to

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1026 Ex. P02798, Disc 1, 01:30:39–01:33:17, p. 42.
1027 Ex. P02798, Disc 1, 01:33:28, p. 42. *See also* Adjudicated Fact 176.
1028 Ex. P02798, Disc 1, 01:33:59, 01:34:22, p. 42.
1029 Ex. P02798, Disc 1, 01:34:49–01:35:04, p. 43. *See also* Adjudicated Fact 176.
1030 Ex. P02798, Disc 1, 01:35:06–01:35:35, p. 43. *See also* Adjudicated Fact 179.
1031 Ex. P02798, Disc 1, 01:35:46, p. 43.
1032 Evert Rave, T. 6891–6892 (27 October 2010).
1033 Ex. P00608, p. 5 (a fax from by Karremans sent to UNPROFOR superiors on 12 July, reporting on the discussions held at the three Hotel Fontana meetings).
1034 Ex. P02798, Disc 1, 01:36:37–01:36:51, 01:37:48, p. 43. *See also* Evert Rave, T. 6760 (26 October 2010).
1035 Ex. P02798, Disc 1, 01:37:18, p. 43. *See also* Adjudicated Fact 177 (Mandžić told Mladić that he had no power to commit the ABiH to any course of action, nor did he have the authority to negotiate on behalf of the civilian population).
1036 Ex. P02798, Disc 1, 01:37:23–01:37:32, p. 43.
1037 Robert Franken, Ex. P00598, PT. 2487 (16 October 2006), PT. 2558 (17 October 2006).
1038 Evert Rave, Ex. P01004, KT. 890 (21 March 2000). *See also* Pieter Boering, Ex. P01461, PT. 1968 (21 September 2006). *See also* Adjudicated Fact 185.

Kladanj, and that the men of military age would be singled out and then temporarily detained in the municipality of Bratunac.[1039] When Nikolić asked what would happen with these men, Popović answered that "all the Balijas should be killed".[1040] Nikolić, Popović, and Kosorić also discussed possible detention facilities[1041] and execution sites.[1042]

258. The third meeting took place at 10:00 a.m. that same morning.[1043] Mladić attended with Radoslav Janković, Krstić, Kosorić, Popović as well as Miroslav Deronjić, Civil Affairs Commissioner in Srebrenica, Ljubisav Simić, President of the Bratunac Municipal Assembly, Srbislav Davidović, President of the Executive Board of the Bratunac Municipality, and Dragomir Vasić, Chief of the Zvornik CJB.[1044] Kosorić was indicated as being responsible for the transport of the Bosnian Muslims in Potočari.[1045] One of the attendants was introduced by Mladić as the person "responsible for inspecting all male refugees for possible war crimes or criminal behaviour".[1046] DutchBat was represented by Karremans and Boering.[1047] In addition to Nesib Mandžić, Čamila Omanović, and Ibro Nuhanović, who were searched prior to entering the Hotel,[1048] also attended.[1049]

259. When the meeting started, Mladić, referring to his address to Nesib Mandžić at the second meeting, said to those present "[a]s I told this gentleman last night, you can either survive or

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1039 Momir Nikolić, T. 12377 (6 April 2011).

1040 Momir Nikolić, T. 12377–12378 (6 April 2011).

1041 Momir Nikolić, T. 12378 (6 April 2011) (testifying that the facilities discussed were the elementary school of Vuk Karadžić, its gym, the hangar, and Djuro Pucar Stari secondary school and that these locations were proposed by himself, because they were in the area and could be secured with less troops).

1042 Momir Nikolić, T. 12379 (6 April 2011) (testifying that the sites mentioned were the mine of Sase and Ciglane, and the brick-laying facility, pointing out that no one was executed at those places and that he did not recall who first raise the ideas for the sites).

1043 Momir Nikolić, T. 12376–12377 (6 April 2011); PW-071, T. 6087 (closed session) (30 September 2010); Miroslav Deronjić, Ex. P00020a, BT. 6286 (20 January 2004); PW-063, Ex. P00867, PT. 9202 (22 March 2007). *See also* Adjudicated Fact 180.

1044 PW-071, T. 6083–6086 (closed session) (30 September 2010), T. 6102–6103 (closed session) (5 October 2010); Ex. P00624, pp. 39–40. *See also* Ex. P00028. *See also* Miroslav Deronjić, Ex. P00020a, BT. 6195 (19 January 2004), BT. 6286 (20 January 2004); PW-063, Ex. P00866 (confidential), PT. 9203–9204 (private session) (22 March 2007). *See also* Ex. P02525, p. 1. *See also* Adjudicated Facts 182, 183. The Chamber notes that Boering testified Radoslav Janković and Momir Nikolić were also present at this meeting. Pieter Boering, Ex. P01461, PT. 1968–1969 (21 September 2006). Still images of attendees at this third Hotel Fontana meetings record the presence of Radoslav Janković at this meeting. Ex. P00624, p. 40. The Chamber notes that Momir Nikolić himself testified that he did not take part in this meeting. Momir Nikolić, T. 12381–12382 (6 April 2011).

1045 Pieter Boering, Ex. P01461, PT. 1949, 1972 (21 September 2006); Ex. P00991, 01:42:51 and 01:45:07.

1046 Pieter Boering, Ex. P01461, PT. 1969 (21 September 2006). Boering explained that this individual was "from the civilian authorities", but did not recall his name. Pieter Boering, Ex. P01461, PT. 1969–1973 (21 September 2006). The Chamber notes that there were three members of the civilian authorities present at this third Hotel Fontana meeting. PW-063, Ex. P00867, PT. 9202–9203 (22 March 2007).

1047 Pieter Boering, Ex. P01461, PT. 1968 (21 September 2006); Evert Rave, Ex. P01004, KT. 893 (21 March 2000). *See also* PW-063, Ex. P00866 (confidential), PT. 9203 (private session) (22 March 2007); Ex. P02525, p. 1.

1048 Momir Nikolić, T. 12376 (6 April 2011). *See also* Ex. P02798, Disc 3, 00:05:45–00:06:33, p. 48.

1049 Pieter Boering, Ex. P01461, PT. 1968 (21 September 2006). *See also* Evert Rave, Ex. P01004, KT. 893 (21 March 2000); PW-063, Ex. P00866 (confidential), PT. 9203 (private session) (22 March 2007); Ex. P00624, p. 38; Ex. P02525, p. 1; Adjudicated Fact 185.

disappear."[1050] VRS messengers who were entering and leaving the meeting room made a tense impression.[1051] During the meeting, tanks were driving by the hotel and there was the sound of firing.[1052] The Bosnian Muslim representatives were scared and nervous.[1053]

260. Mladić again conducted the meeting,[1054] and repeated his position that all armed men surrender their weapons to the VRS.[1055] He stated that upon compliance with this demand, the civilian population could "go wherever [they] want" or stay.[1056] Also at this meeting, Mladić stated that the military aged men between 16 and 60 would be screened for involvement in war crimes.[1057] He stated that he would provide the vehicles for the transportation of those who wanted to leave the compound.[1058] He further said that someone else should provide the required fuel,[1059] suggesting that UNPROFOR provide four or five tanker trucks to fill up vehicles for the transportation of the Bosnian Muslims.[1060] Karremans stated that he had been ordered by the Dutch Ministry of Defence to assist as much as possible.[1061] He then asked for a meeting with the representatives of the RS command,[1062] but Mladic answered that he could not arrange this.[1063]

261. Following this last Hotel Fontana meeting on the morning of 12 July, Karremans and Boering returned to Potočari at around 12:00 p.m. and conducted a short briefing.[1064] They did not have the impression that concrete agreements had been made, as it remained unclear who would

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1050 Ex. P02798, Disc 3, 00:10:11–00:10:18, p. 50. *See also* PW-063, Ex. P00867, PT. 9345–9346 (23 March 2007); PW-063, T. 6614 (private session) (20 October 2010).

1051 Pieter Boering, Ex. P01461, PT. 1974–1975 (21 September 2006).

1052 Pieter Boering, Ex. P01461, PT. 1975 (21 September 2006).

1053 *See* Annex C: Confidential Annex.

1054 PW-063, Ex. P00866 (confidential), PT. 9204 (private session) (22 March 2007).

1055 Ex. P02798, Disc 3, 00:10:21–00:10:34, pp. 50–51. *See also* PW-063, Ex. P00867, PT. 9298 (23 March 2007).

1056 Ex. P02798, Disc 3, 00:10:37–00:10:51, p. 51.

1057 Pieter Boering, Ex. P01451, PT. 1969, 1974–1975 (21 September 2006); Robert Franken, T. 3355 (30 June 2010) (stating that he heard it from Karremans); PW-063, T. 6612 (private session) (20 October 2010). *See also* Richard Butler, T. 16635–16636 (14 July 2011). The Chamber notes the testimony of Miroslav Deronjić, who stated that Karadžić had told him to convey the specific order to those at the meeting that potential war criminals who might use the opportunity to shelter themselves or join the civilians, should be "retained". Miroslav Deronjić, Ex. P00020a, BT. 6159 (19 January 2004). *Ibid. See* Annex C: Confidential Annex. The Chamber does not exclude the fact that more than one person at the meeting discussed the issue of vetting war criminals and accepts the testimony of Boering, Franken, and PW-063 to this effect.

1058 Ex. P02798, Disc 3, 00:11:43, p. 51. The Chamber notes Mladić's statement during this meeting that the Bosnian Muslims should "go to the stadium" and that a VRS representative would be "with them while they board". Ex. P02798, Disc 3, 00:12:44–0:12:56, p. 51. The Bosnian Muslim representatives understood the reference to the stadium to be psychological intimidation as Bosnian Muslim civilians had been killed at this location in April and May of 1992; this statement affected Čamila Omanović so intensely that she later tried to hang herself. PW-071, T. 6087–6089 (closed session) (30 September 2010), T. 6110–6111 (closed session) (5 October 2010).

1059 Ex. P02798, Disc 3, 00:11:42–00:11:48, p. 51.

1060 Ex. P02798, Disc 3, 00:11:54, p. 51. *See also* Adjudicated Fact 189. As discussed in further detail below, the Chamber finds that by the time the third Hotel Fontana meeting was taking place, buses, as well as fuel, were already being organised by the VRS. *See supra* paras. 269–271.

1061 Ex. P02798, Disc 3, 00:13:20–00:13:43, pp. 51–52. Mladić thanked Karremans for this offer (Ex. P02798, Disc 3, 00:13:44, p. 52), and accepted it (Ex. P02798, Disc 3, 00:14:02–00:14:11, p. 52).

1062 Ex. P02798, Disc 3, 00:14:21–00:14:36, p. 52.

1063 Ex. P02798, Disc 3, 00:14:45, p. 52.

1064 Pieter Boering, Ex. P01461, PT. 1976 (21 September 2006); Evert Rave, Ex. P01004, KT. 894 (21 March 2000).

operate the transportation of the Bosnian Muslims, who would provide for fuel, and how exactly the support of the civilian population would take place.[1065] Furthermore, concerns persisted as to what the "screening" of military aged men entailed.[1066] Karremans ordered Boering and Franken to return to the Hotel Fontana to seek clarification of these issues.[1067] There, they were told by Momir Nikolić who was accompanied by Kosorić that everything had already been agreed on, that they should get lost, and that the transportation of the Bosnian Muslims in Potočari had already started.[1068] Surprised by this,[1069] Franken and Boering drove back to the compound and saw some buses heading from the direction of Bratunac towards Potočari[1070] and others parked in front of the compound.[1071] The transportation of the Bosnian Muslims had already started.[1072]

3. Bosnian Serb Forces Taking Over Control of Potočari (12 July)

262. In compliance with an order given by Mladić to Deputy Commander of the RS MUP Special Police Brigade Borovčanin[1073] on 11 July 1995, Borovčanin and units of joint police forces advanced on Potočari in the early hours of the morning of 12 July 1995, having taken control of OP Papa at Žuti Most ("Yellow Bridge").[1074] The joint police forces consisted of the 1st PJP Company from Zvornik[1075] and the Jahorina Recruits led by SPB Assistant Commander Duško Jević, a.k.a. "Stalin", and Company Commander Mendeljev Đurić, a.k.a. "Mane".[1076] A 12 July 1995 report by Dragomir Vasić, the Chief of the Zvornik CJB, confirms the action, referring to, *inter alia,* joint police forces "advancing on Potočari with the aim of taking UNPROFOR personnel prisoner, surrounding the entire civilian population and cleansing the area of enemy troops."[1077]

263. As a part of this operation, in addition to the Jahorina Recruits and the 1st PJP Company from Zvornik, numerous Bosnian Serb Forces were deployed in and around Potočari from

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1065 Pieter Boering, Ex. P01461, PT. 1975–1976 (21 September 2006); Evert Rave, Ex. P01004, KT. 893–894 (21 March 2000).
1066 Pieter Boering, Ex. P01461, PT. 1974 (21 September 2006).
1067 Pieter Boering, Ex. P01461, PT. 1976 (21 September 2006); Evert Rave, Ex. P01004, KT. 894 (21 March 2000).
1068 Pieter Boering, Ex. P01461, PT. 1976 (21 September 2006); Evert Rave, Ex. P01004, KT. 894 (21 March 2000).
1069 Evert Rave, Ex. P01004, KT. 895 (21 March 2000).
1070 Pieter Boering, Ex. P01461 PT. 1976 (21 September 2006).
1071 Evert Rave, Ex. P01004, KT. 895 (21 March 2000). *See also* PW-071, T. 6090 (closed session) (30 September 2010).
1072 *See infra* para. 275.
1073 *See supra* para. 152.
1074 Ex. P01335, p. 2 (Borovčanin reports that Mladić ordered him to launch an attack in the early hours of 12 July 1995 and lists the various units deployed; he also indicates that "(Dutch) UN members did not react" to the takeover of the checkpoint); Ex. P02238, p. 1; Ex. P00018, p. 13; Robert Franken, Ex. P00598, PT. 2588 (17 October 2006). *See also* Richard Butler, T. 16667–16669 (14 July 2011).
1075 PW-052, Ex. P01598, PT. 8580 (9 March 2007); Ex. P01335, p. 2.
1076 Mendeljev Đurić, Ex. P01620, PT. 10804–10807 (2 May 2007); Ex. P01335, p. 2; PW-052, Ex. P01598, PT. 8580–8581 (9 March 2007) (referring to the "deserters' unit"); Adjudicated Fact 520; Richard Butler, T. 16667–16668 (14 July 2011). *See supra* para. 156.
1077 Ex. P02524; Ex. P02238, p. 1; Richard Butler, T. 16625–16626 (13 July 2011), T. 16658–16659, 16667 (14 July 2011). *See also* Ex. P01335, p. 2.

12 to 13 July 1995, including members of the Bratunac Brigade MP,[1078] Bratunac SJB,[1079] the 10th Sabotage Detachment,[1080] the MP Battalion of the 65th Protection Regiment,[1081] RDB officers,[1082] and Drina Corps officers and units.[1083] There were also other MUP and MP members.[1084]

264. Coinciding with the third Hotel Fontana meeting, it was still morning when Bosnian Serb Forces arrived in Potočari.[1085] All in uniform, they advanced from a northerly direction, in the area of OP Papa and Bratunac.[1086] In Potočari, shelling and firing of small arms and mortar were heard[1087] and soldiers wearing camouflage uniforms were setting fire to houses, barns, and haystacks in nearby towns.[1088] Bosnian Muslims were fleeing from the burning homes.[1089] Seeing the Bosnian Serb Forces, a panic arose in the crowd at Potočari.[1090]

265. As the members of the Bosnian Serb Forces arrived in the town of Potočari, they moved in among the edges of the crowd.[1091] The DutchBat soldiers were severely outnumbered.[1092] When DutchBat Officer Lieutenant Johannes Rutten told the members of the Bosnian Serb Forces not to cross the red/white taped area because it was UN territory, they laughed and stepped over the tape.[1093] They ordered those in the UN compound, primarily the men, to show their identification documents.[1094] Some of them searched the crowd with German Shepherds.[1095] The members of the

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1078 Momir Nikolić, T. 12385, 12395 (6 April 2011); Zlatan Čelanović, T. 3648 (7 July 2010); PW-052, Ex. P01598, PT. 8593 (9 March 2007); Adjudicated Facts 514, 515.

1079 Momir Nikolić, T. 12385 (6 April 2011).

1080 Momir Nikolić, T. 12385 (6 April 2011); Dražen Erdemović, Ex. P00215, PT. 10960 (4 May 2007). *See also* Adjudicated Fact 521.

1081 Momir Nikolić, T. 12385 (6 April 2011). *See also* Adjudicated Fact 521.

1082 Richard Butler, T. 16644 (14 July 2011).

1083 Adjudicated Fact 512.

1084 Mirko Trivić, Ex. P01197, PT. 11838 (21 May 2007) (identifying both military and civilian police); Mirsada Malagić, T. 10027–10028 (16 February 2011) (identifying Milisav Gavrić of the Srebrenica SUP); PW-011, Ex. P01512 (confidential), PT. 3602 (private session) (6 November 2006). *See also* PW-052, Ex. P01598, PT. 8581 (9 March 2007) (identifying Vaso Mijović of the Serbian MUP). *See also* Adjudicated Fact 519 ("Serb military police wearing blue uniforms with black belts and driving police vehicles were identified").

1085 Mile Janjić, Ex. P01096, BT. 9765–9767, 9770 (24 May 2004); PW-052, Ex. P01598, PT. 8580–8581 (9 March 2007); Ex. P02157, p. 20. *See supra* para. 258.

1086 Robert Franken, Ex. P00598, PT. 2489–2490 (16 October 2006) ("proper" and same uniforms); Paul Groenewegen, Ex. P00098, BT. 1023 (10 July 2003) (not dressed as an ordinary army and a gathering of "all sorts of camouflage"); Joseph Kingori, Ex. P00950, PT. 19245 (13 December 2007) (slightly different from the normal VRS soldiers in that they wore black); Adjudicated Fact 446. *See also* Johannes Rutten, Ex. P02629, PT. 4835–4836 (30 November 2006).

1087 Paul Groenewegen, Ex. P00098, BT. 1023 (10 July 2003); Johannes Rutten, Ex. P02638, KT. 2115 (5 April 2000).

1088 Mirsada Malagić, T. 10024–10025 (16 February 2011); PW-011, Ex. P01513, PT. 3601 (6 November 2006). Those passing by later saw burned homes in the area. Mendeljev Đurić, Ex. P01620, PT. 10806 (2 May 2007); Adjudicated Facts 439, 441.

1089 Mirsada Malagić, T. 10024 (16 February 2011); Adjudicated Fact 442.

1090 Hana Mehmedović, Ex. P01533 (17 June 2000), pp. 2, 4; PW-011, Ex. P01513, PT. 3601 (6 November 2006); Ex. P01485, p. 7; Johannes Rutten, Ex. P02638, KT. 2117 (5 April 2000); Paul Groenewegen, Ex. P00098, BT. 1023–1024 (10 July 2003).

1091 PW-011, Ex. P01513, PT. 3601, 3605 (6 November 2006); Mile Janjić, Ex. P01096, BT. 9770 (24 May 2004).

1092 Ex. P01485, pp. 10, 17. There were approximately 150–200 DutchBat soldiers present at Potočari during 11 and 12 July 1995. Eelco Koster, Ex. P01483, PT. 3127 (27 October 2006), Ex. P01485, p. 6.

1093 Johannes Rutten, Ex. P02638, KT. 2117 (5 April 2000). *See also* Ex. P01485, p. 8.

1094 PW-017, Ex. P02883, KT. 1251–1252 (24 March 2000). A delegation was led into the UN compound to look for

Bosnian Serb Forces terrified the Bosnian Muslims by shouting, swearing, and insulting, with some telling them "Alija did all this to you."[1096] By 1:00 p.m. on 12 July, the Bosnian Serb Forces had control of Potočari.[1097]

266. While in Potočari, members of the VRS disarmed DutchBat soldiers and took their personal possessions during their patrolling.[1098] When DutchBat soldiers were dispatched to prevent further such incidents, they were taken by VRS soldiers as human shields in an exchange of fire from the hill.[1099] After the gunfire ceased, the Bosnian Serb soldiers continued to take DutchBat equipment.[1100] Rutten reported this incident to Momir Nikolić, but the report was largely ignored.[1101]

267. Later in the day, Rutten and other DutchBat soldiers under his command were forced at gunpoint to surrender more of their weapons, including communication sets and vests.[1102] Approximately 11 DutchBat soldiers, including Rutten, and one doctor were taken hostage and detained for a few hours near a small bridge next to the bus complex.[1103] They were kept under the surveillance of two members of a special police unit.[1104] Rutten reported this incident to "Captain

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"war criminals". PW-003, Ex. P01509, BT. 6084 (17 December 2003). Momir Nikolić, escorted by UN troops, went into the UN compound to evaluate the state of the Bosnian Muslims gathered there. Eelco Koster, Ex. P01483, PT. 3071–3072 (26 October 2006).

1095 PW-073, Ex. P00048 (confidential), p. 7; Šehra Ibišević, Ex. P01526 (21 June 2000), p. 4; Ex. P00608, p. 3. *See also* Ex. P01485, p. 10; Ex. P01145, p. 4.

1096 Mirsada Malagić, T. 10026 (16 February 2011). PW-011, Ex. P01513, PT. 3601–3602 (6 November 2006); Ex. P01485, p. 8. *See also* Adjudicated Fact 439. The Chamber notes that Mile Janjić denied that he heard about or observed incidents of abuse of Bosnian Muslims by Bosnian Serb Forces. Mile Janjić, Ex. P01096, BT. 9783, 9796–9797 (24 May 2004), BT. 9831–9832 (25 May 2004). When confronted with a video clip that showed Bosnian Muslim men being abused, he claimed that while such incidents may have taken place, he did not hear or see anything. Mile Janjić, Ex. P01096, BT. 9831–9832 (25 May 2004). PW-063, similarly, stated that while he noticed that there was a lot of chaos no one was mistreating the Bosnian Muslims in Potočari. PW-063, T. 6517 (19 October 2010). On the basis of the evidence of Bosnian Muslims and members of UNPROFOR cited in this footnote, as well as in the section of the Humanitarian Situation in Potočari (11–13 July), above (see *supra* Chapter V. B. 1.), the Chamber does not deem the testimony of Janjić and PW-063 credible on this point.

1097 Ex. P02238, p. 1; Richard Butler, T. 16658–16659 (14 July 2011).

1098 Johannes Rutten, Ex. P02638, KT. 2118 (5 April 2000); Eelco Koster, Ex. P01483, PT. 3051–3052 (26 October 2006). *See also* PW-002, Ex. P01497, KT. 1510 (28 March 2000).

1099 Johannes Rutten, Ex. P02638, KT. 2118–2119, 2191 (5 April 2000). On seeing this, Rutten pointed a gun at the Bosnian Serbs demanding that the DutchBat soldiers be let go, and the DutchBat soldiers were released. Johannes Rutten, Ex. P02638, KT. 2119 (5 April 2000).

1100 Johannes Rutten, Ex. P02638, KT. 2119 (5 April 2000).

1101 Johannes Rutten, Ex. P02638, KT. 2119–2120 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4891–4892 (30 November 2006).

1102 Johannes Rutten, Ex. P02629, PT. 4920–4922 (4 December 2006); Eelco Koster, Ex. P01483, PT. 3052–3053 (26 October 2006); Ex. P01485, p. 12; Johannes Rutten, Ex. P02638, KT. 2120–2122 (5 April 2000). Bosnian Muslim civilians saw members of the Bosnian Serb Forces take the UNPROFOR uniforms and wear them. Samila Salčinović, Ex. P01524 (18 June 2000), p. 2; Šehra Ibišević, Ex. P01526 (21 June 2000), pp. 3, 5.

1103 Johannes Rutten, Ex. P02638, KT. 2122–2123 (5 April 2000). Rutten marked the place they were held with an "A". Ex. P02648; Johannes Rutten, Ex. P02629, PT. 4816 (29 November 2006).

1104 Johannes Rutten, Ex. P02638, KT. 2122 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4810 (29 November 2006). The Chamber notes that these two men were members of the special police forces ("*Specijalni*"), but is unable to make a finding as to the specific unit to which they belong.

Mane"—Mendeljev Đurić—who initially dismissed him, but later allowed him and the other DutchBat soldiers to return to the UN compound.[1105]

4. Transportation of Bosnian Muslims from Potočari (12–18 July)

(a) Provision of Fuel and Buses

268. As discussed in more detail in the section above, by 12 July 1995, approximately 25,000–30,000 Bosnian Muslims, mainly women, children and elderly, had gathered at the UN compound in Potočari.[1106] Their fate was discussed at Hotel Fontana in Bratunac on both 11 and 12 July 1995.[1107]

269. Late on 11 July 1995, Mladić issued an order for the mobilisation of buses, orally conveyed through the Main Staff to Petar Škrbić,[1108] Assistant Commander for Organisation, Mobilisation and Personnel of the Main Staff.[1109] Škrbić immediately took steps to requisition the required buses and fuel to carry out this order, issuing an urgent request early in the morning of 12 July to the Ministry of Defence to mobilise at least 50 buses to be sent to the sports stadium in Bratunac by 2:30 p.m. that day, as ordered by Mladić.[1110] The Ministry of Defence, in turn, forwarded the Main Staff's request to subordinate Secretariats of the Ministry of Defence.[1111]

270. The Drina Corps similarly undertook action in response to Mladić's order. An intercepted conversation at 7:35 a.m. that same morning records the then Chief of Staff of the Drina Corps Krstić[1112] and the Chief of Transportation Services of the Drina Corps Krsmanović discussing the provision of these buses, demonstrating the implementation of Mladić's order down the chain of command.[1113] Just about an hour after this intercepted conversation, the Drina Corps directed its

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1105 Johannes Rutten, Ex. P02638, KT. 2123–2124 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4939 (4 December 2006). Eelco Koster described being introduced to "Miki" and "Mane" on the evening of 12 July and was told by DutchBat Officer Van Duijn that these two men were in charge at that moment. He identifies these two individuals on video-footage. Eelco Koster, Ex. P01483, PT. 3053–3054 (26 October 2006); Ex. P00991, 02:26:11, 02:26:29.

1106 *See supra* para. 241.

1107 *See supra* Chapter V. B. 2.

1108 Petar Škrbić, T. 18581–18583 (30 January 2012), T. 18730–18731 (2 February 2012). *See* also Richard Butler, T. 16620 (13 July 2011).

1109 Petar Škrbić, T. 18523, 18575–18576 (30 January 2012).

1110 Petar Škrbić, T. 18575–18577, 18580–18582 (30 January 2012); Ex. P02520.

1111 Petar Škrbić, T. 18586–18591, 18594–18597 (31 January 2012), Ex. D00342; Ex. D00343; Ex. D00345 (forwarded by the Ministry of Defence of the RS to the Secretariat of the Ministry of Defence in Zvornik); Ex. D00346 (forwarded by the Ministry of Defence of the RS to the Secretariat of the Ministry of Defence in Bijeljina). *See also* Richard Butler, T. 16621–16622 (13 July 2011); Ex. P02522 (referring back to Škrbić's request, Ex. P02520); Adjudicated Fact 454.

1112 The Command of the Drina Corps changed from 12 to 13 July 1995. Commander Živanović was replaced by Chief of Staff of the Drina Corps, Radoslav Krstić. *See supra* para. 125.

1113 Richard Butler, T. 16614–16616 (13 July 2011). The intercept records Krstić telling Krsmanović that 50 buses in total from Pale, Višegrad, Rogatica, Sokolac, Han Pijesak, Vlasenica, Milići, Bratunac, and Zvornik should be sent to the stadium in Bratunac by "1700 hrs". Ex. P00244.

subordinate brigades to secure all available mini-buses belonging to their units for use by the Drina Corps on 12 July 1995, and to send them to the sports stadium in Bratunac by 4:30 p.m. that day.[1114] Soon after, the Zvornik Brigade Command received an order from the Drina Corps Command to send a traffic squad to Konjević Polje in order to regulate traffic.[1115]

271. By 10:00 a.m. on the morning of 12 July, the Drina Corps Command reported up to the Main Staff in compliance with Mladić's order, informing that it had been able to secure the use of buses coming from various municipalities.[1116] The evidence demonstrates, however, the VRS was having problems with the lack of available fuel to support the planned transportation operation of Bosnian Muslims,[1117] requiring Živanović to send an urgent letter to the Main Staff in the course of the morning requesting an additional approval for 10,000 litres of diesel fuel and 2,000 litres of petrol.[1118] Franken, who was briefed by Karremans at around noon about discussions held at the third Hotel Fontana meeting that morning, was told that an agreement had been made and that DutchBat would supply the fuel for the transportation.[1119] DutchBat did not, however, have the amounts required for the transportation; ultimately, the VRS advanced the required fuel to DutchBat, requesting reimbursement for the costs after the operation was completed.[1120]

272. At a meeting at the Bratunac Brigade Headquarters on the evening of 12 July 1995, Mladić had a telephone conversation in which he asked an unknown person to provide fuel, while the VRS would make arrangements for the requisitioning of more buses for the transportation to continue on

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1114 Richard Butler, T. 16617–16618 (13 July 2011); Ex. P02282. The document is stamped as having been received at "8:35 hrs" on 12 July. *See also* Adjudicated Fact 452.

1115 Ex. P01122, p. 1 (A daily combat report issued by Zvornik Brigade Commander Pandurević on 12 July 1995, confirming implementation of the Drina Corps' order). *See also* PW-057, Ex. P02279 (confidential), PT. 15823 (closed session) (26 September 2007).

1116 Ex. P02521 (stamped as being received at 10:00 a.m.). The municipalities from which buses were to be sent listed in this document are Pale, Sokolac, Višegrad, Rogatica, Han Pijesak, Milići, Šekovići, Bratunac, and Zvornik. These are the same municipalities as the ones listed by Krstić in his oral order to Krsmanović contained in the intercepted conversation earlier that morning at 7:35 a.m. *See* Ex. P00244.

1117 *See* Ex. P01539b (an intercepted communication between Krsmanović and an unidentified speaker at 9:22 a.m. on 12 July 1995). Discussing this particular intercept, Butler testified that as a result of the embargo on the RS from fuel and other supplies coming from the FRY, the Drina Corps did not have sufficient quantities of fuel. Richard Butler, T. 16617–16618 (13 July 2011). *See also* Ex. P00245 (intercepted conversation on 12 July at 12:20 p.m. between two unidentified speakers concerning the problem with the lack of fuel). Butler testified that the "Miletić" referred to in the intercept was the Chief of Operations of the Main Staff, adding that Miletić's involvement in acquiring the necessary fuel was not only logical from the perspective of his function within the Main Staff, but also signified that the highest levels of the Main Staff were aware of the problem. Richard Butler, T. 16622–16623 (13 July 2011).

1118 Ex. P02521. The letter is stamped as having been received at "1000 hours" on 12 July 1995 and processed at "1020 hours". The request was made "[p]ursuant to the VRS Main Staff Commander's order to provide 50 buses for evacuation from the Srebrenica enclave". *Ibid.*

1119 Robert Franken, Ex. P00598, PT. 2492 (16 October 2006), PT. 2568 (17 October 2006); Johannes Rutten, Ex. P02629, PT. 4942 (4 December 2006). Franken testified that it was not clear to him whether Karremans or Smith had made this agreement with the VRS. Robert Franken, Ex. P00598, PT. 2568 (17 October 2007). *See also* Momir Nikolić, T. 12660 (12 April 2011).

1120 Robert Franken, Ex. P00598, PT. 2569–2570 (17 October 2006).

the next day, 13 July 1995.[1121] Buses that were used for the transportation of Bosnian Muslims from Potočari on 12 and 13 July 1995 were requisitioned exclusively by the VRS.[1122]

273. The problem with fuel persisted on 13 July 1995.[1123] On this day, as a result of VRS operations towards Žepa, the MUP, who had been resubordinated to the VRS for purposes of the operation against Srebrenica,[1124] had been tasked by Mladić to continue the transportation of the approximately 15,000 remaining Bosnian Muslims from Potočari to Kladanj; to this effect, Dragomir Vasić, Chief of the Zvornik CJB, submitted an urgent request for ten tons of petrol to the MUP.[1125]

274. The Chamber notes the testimony of Petar Škrbić that when receiving the order from Mladić to mobilise buses to be sent to Bratunac, he was aware that the buses were intended to "evacuate" people, but not aware of which people needed to be transported.[1126] Živanović, in his letter on the morning of 12 July sent at around 10:00 a.m., informing the Main Staff that buses had been assembled as ordered, stated that the final destination of these buses was unknown to them "for the moment".[1127] The Chamber finds, however, that the decision that Kladanj would be the destination for the transport of the Bosnian Muslim population had already been made by the time Živanović sent his letter to the Main Staff.[1128] In line with this decision, the VRS took measures to ensure that the roads leading to Kladanj were made passable, removing mines and other barriers en route from Potočari.[1129]

[1121] Mirko Trivić, Ex. P01197, PT. 11845–11846 (21 May 2007), PT. 11980 (23 May 2007); Petar Škrbić, T. 18596–18597 (31 January 2012); Ex. D00346.

[1122] Joseph Kingori Ex. P00950, PT. 19252–19253 (13 December 2007); Ex. P00992, p. 11. Kingori testified that he had told Mladić the UN was going to send buses to collect the Bosnian Muslims from Potočari, but Mladić told him they did not require help from the UN as he, Mladić, had organised his own transport. *Ibid.* Kingori testified further that he did not see any other vehicles—either of the ABiH or of UNPROFOR—being used to transport these persons from Potočari. Joseph Kingori, T. 5596 (20 September 2010). The Chamber notes here the evidence of Miroslav Deronjić, appointed civilian commissioner of Srebrenica town on 11 July 1995 following the fall of the enclave, that he had asked Karadžić to make an appeal for vehicles through the media and called neighbouring municipalities and various individuals to send buses. Deronjić believed that he had been the one to organise the convoys and buses but learned subsequently that this had already been done. Miroslav Deronjić, Ex. P00020a, BT. 6199 (19 January 2004).

[1123] *See supra* para. 272.

[1124] *See supra* para. 262.

[1125] Ex. P02531.

[1126] Petar Škrbić, T. 18734–18735 (2 February 2012).

[1127] Richard Butler, T. 16620–16621 (13 July 2011); Ex. P02521.

[1128] *See supra* para. 257. *See also* Richard Butler, T. 16638–16639 (14 July 2011); Ex. P02525.

[1129] Ex. P00241 (an intercepted conversation between Mladić and an unidentified speaker concerning the removal of mines and obstacles en route to Kladanj); Ex. P01566a (an intercepted conversation on 12 July at 1:05 p.m. between Krstić and Sobot, a logistics officer of the Drina Corps Staff, in which the two men, according to Butler, discuss the route of the convoy from Potočari to Kladanj); Richard Butler, T. 16642–16644, 16646–16647 (14 July 2011).

(b) Boarding Process and Separation of Men

275. Buses and trucks started to arrive in front of the UN compound in Potočari from the direction of Bratunac in the early afternoon of 12 July 1995.[1130] The testimony of several DutchBat officers and UNMO member Kingori suggests that the start of the transportation of Bosnian Muslim civilians came unexpectedly.[1131] The situation was chaotic.[1132] It was not entirely clear to the DutchBat officers on the ground what their role would be in the transportation process.[1133] Neither was it clear to them, at the early stage of the transportation process, where the Bosnian Muslims would be taken.[1134] The VRS, assisted by the MUP, organised the transportation operation and were in charge of it.[1135] Momir Nikolić had been ordered by Main Staff Intelligence Officer Radoslav Janković to ensure the operation was carried out efficiently.[1136] Several VRS and MUP units were already present in Potočari by this time and more were arriving; this included members of the Bratunac Brigade MP and the 65th Protection Regiment of the Main Staff.[1137] The Bosnian Muslims in Potočari could not physically be secured and controlled by DutchBat because they did not have enough people on the ground.[1138] Armed VRS and MUP soldiers were walking amongst

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1130 Pieter Boering, Ex. P01461, PT. 2008 (22 September 2006); Joseph Kingori, Ex. P00950, PT. 19253 (13 December 2007); Vincentius Egbers, Ex. P01142, PT. 2719–2720 (18 October 2006); Ex. P01145, p. 4; Johannes Rutten, Ex. P02629, PT. 4887–4888 (30 November 2006); Paul Groenewegen, Ex. P00098, BT. 1025 (10 July 2003); PW-003, Ex. P01509, BT. 6084 (17 December 2003). *See also* Mile Janjić, Ex. P01096, BT. 9845 (25 May 2004); PW-011, Ex. P01513, PT. 3606 (6 November 2006). *See also* Adjudicated Fact 461.

1131 Evert Rave, Ex. P01004, KT. 894–895 (21 March 2000); Evert Rave, T. 6892 (27 October 2010); Joseph Kingori, Ex. P00950, PT. 19253 (13 December 2007); Ex. P00992, p. 11. *See also* PW-071, T. 6090 (closed session) (30 September 2010). *See also supra* para. 261.

1132 PW-003, Ex. P01509, BT. 6085 (17 December 2003); Momir Nikolić, T. 12673 (12 April 2011); Evert Rave, Ex. P01004, KT. 897 (21 March 2000).

1133 *See, e.g.,* Vincentius Egbers, Ex. P01142, PT. 2803 (19 October 2006); PW-003, Ex. P01509, BT. 6085 (17 December 2003). The Chamber notes that the video-footage of the third Hotel Fontana meeting held at 10:00 a.m. on 12 July 1995 records Karremans offering assistance by DutchBat since Karremans had been ordered by the Dutch Ministry of Defence to "assist as much as possible". Ex. P02798, Disc 3, 00:13:20, p. 51. Mladić is recorded as accepting this offer. Ex. P02798, Disc 3, 00:14:02, p. 52. *See also* Adjudicated Fact 188.

1134 Vincentius Egbers, Ex. P01142, PT. 2720 (18 October 2006), PT. 2804–2806 (19 October 2006); Vincentius Egbers, T. 7194–7195 (2 November 2010); PW-003, Ex. P01509, BT. 6084 (17 December 2003).

1135 Evert Rave, T. 6892 (27 October 2010); Ex. P01143, p. 3; PW-002, Ex. P01497, KT. 1514–1515 (28 March 2000). *See also* Momir Nikolić, T. 12661 (12 April 2011); Ex. P01335, pp. 2–3 (a report by Ljubiša Borovčanin dated 5 September 1995 on the activities of the police forces under his command, referring to the operation to transport the civilian population that had gathered in Potočari to Kladanj, states that the "job was organised" by the VRS, while MUP forced had a supportive role, such as regulating traffic and maintaining public law and order); PW-017, T. 723 (18 March 2010). The Chamber further notes that Colonel Lazar Aćamović, as Deputy Commander for Rear Services and Logistics of the Drina Corps, had been put in charge of the logistics to support the operation. Robert Franken, Ex. P00597, PT. 2492 (16 October 2006), PT. 2619–2620 (17 October 2006).

1136 Momir Nikolić, T. 12379–12380 (6 April 2011) (testifying that he was told to help to "have this operation carried out as it should be"). In his plea agreement, Momir Nikolić stated that Radoslav Janković asked him to "coordinate" the transportation of women and children and the separation of able-bodied men (Ex. P02157, p. 20). He testified in this trial that the word "coordination" should not be interpreted in a military sense because that would suggest he had actual command authority, which was not the case. Momir Nikolić, T. 12379, 12383 (6 April 2011). The Chamber notes the testimony of PW-003, who referred to Momir Nikolić as a "commander" based on the fact that "he was the one organizing the situation there". PW-003, Ex. P01509, BT. 6097, 6100 (17 December 2003).

1137 *See supra* paras. 262–263.

1138 Momir Nikolić, T. 12615 (12 April 2011); Ex. P00622, p. 2. *See also* Evert Rave, Ex. P01004, KT. 905–908 (21 March 2000).

the Bosnian Muslims cursing, mocking, shouting at them, and creating panic.[1139] A Serb soldier shouted at a group of Bosnian Muslims stating "[y]ou are Turks and you would be best off if you go to Turkey."[1140] VRS officers including Mladić, Krstić, Radoslav Janković, the Chiefs of Security and Intelligence of the Drina Corps, Popović and Kosorić respectively, Momir Nikolić, Krsmanović and Aćamović, members of the 10th Sabotage Detachment and the Drina Wolves, as well as MUP officer Borovčanin, and special police commanders Mendeljev Đurić a.k.a. "Mane" and Duško Jević a.k.a. "Stalin", were present in Potočari as the transportation process started.[1141] In Momir Nikolić's words, "there are few officers from the Main Staff and from the brigade commands who were not present at Potočari on the 12th. I can tell you that everybody was there present and everybody wanted to see that".[1142]

276. Around the same time that the buses started to arrive around the UN compound, Mladić addressed the crowd, telling them that 30 buses would arrive to transport those who wished to be transported to Kladanj from where "you will pass onto territory controlled by Alija's forces", that they should not panic and nobody would harm them, and that "[a]nybody who wishes to stay can stay".[1143] A Serb camera crew filmed the distribution, by VRS soldiers, of candies to children,[1144] and of water and bread to the Bosnian Muslims.[1145] DutchBat officer Lieutenant Eelco Koster was

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1139 *See, e.g.,* PW-011, Ex. P01512 (confidential), PT. 3601, 3620 (private session) (6 November 2006); Mirsada Malagić, T. 10026 (16 February 2011); PW-011, Ex. P01513, PT. 3601, 3605, 3620 (6 November 2006); PW-012, Ex. P01518, PT. 3311 (31 October 2006); PW-017, Ex. P02883, KT. 1256 (24 March 2000). *See also* Ex. P01485, p. 8; Hana Mehmedović. Ex. P01533 (17 June 2000), p. 2; Adjudicated Fact 447. In a report to his MUP superiors on 12 July 1995, Chief of the Zvornik CJB Dragomir Vasić details that joint police forces were advancing on Potočari "with the aim of taking UNPROFOR personnel prisoner, surrounding the entire population and cleansing the area of enemy troops." *See* Ex. P02524, p. 1. The Chamber notes the testimony of Mendeljev Đurić, the commander of the 1st Company of the Jahorina Recruits of the MUP, that he deployed members of his unit around the civilians to protect them so that nobody could approach them. Mendeljev Đurić, Ex. P01620, PT. 10807–10808 (2 May 2007). Judge Flügge dissents to the reliance on this portion of Đurić's evidence and considers his account to be motivated by an interest to minimise his own role in the events. His account is contradicted by the fact that there is no evidence that any member of his unit acted in accordance with his alleged order. Further, his evidence is refuted by the reason stated in Vasić's report for the entry into Potočari of the joint police forces, namely to, *inter alia,* take UNPROFOR personnel prisoner and surround the entire population.

1140 PW-011, Ex. P01512 (confidential), PT. 3601 (private session) (6 November 2006).

1141 Momir Nikolić, T. 12384, 12386–12387, 12389–12390 (6 April 2011); PW-052, Ex. P01598, PT. 8581 (9 March 2007); Mile Janjić, Ex. P01096, BT. 9770–9771, 9781 (24 May 2004); Pieter Boering, Ex. P01461, PT. 2008 (22 September 2006); Mendeljev Đurić, Ex. P01620, PT. 10809 (2 May 2007) T. 10892 (3 May 2007); Ex. P01145, p. 4; Evert Rave, Ex. P01004, KT. 901–902 (21 March 2000); Joseph Kingori, Ex. P00950, PT. 19275 (14 December 2007); Ex. P00992, p. 11. *See also* Richard Butler, T. 16667–16668 (14 July 2011); Adjudicated Facts 515, 520, 522.

1142 Momir Nikolić, T. 12386, 12388–12389 (6 April 2011).

1143 *See* Ex. P02798, 00:24:41–00:25:15, 00:28:09–00:28:48, pp. 55–56. *See also* Pieter Boering, Ex. P01461, PT. 2008 (22 September 2006); Ex. P01485, pp. 9–10; Mirsada Malagić, T. 10034 (16 February 2011); Rahima Malkić, Ex. P01521 (17 June 2000), p. 3; PW-071, T. 6114–6115 (closed session) (5 October 2010); Mile Janjić, Ex. P01096, BT. 9772 (24 May 2004); PW-052, Ex. P01598, PT. 8581 (9 March 2007).

1144 Joseph Kingori, Ex. P00950, PT. 19247 (13 December 2007) (describing this activity by the VRS soldiers as an "act"); PW-002, Ex. P01497, KT. 1520 (28 March 2000). *See also* Mirsada Malagić, T. 10034 (16 February 2011).

1145 Johannes Rutten, Ex. P02638, KT. 2125–2126 (5 April 2000); Ex. P01485, pp. 8–9; Pieter Boering, Ex. P01461, PT. 2008 (22 September 2006); Ex. P00992, p. 11; PW-066, Ex. P01738 (confidential), BT. 7868 (closed session) (20 April 2004); PW-073, Ex. P00048 (confidential), pp. 8–9; Ex. P00609, p. 4; Ex. P01265; Ex. P02798, Disc 3,

told by his interpreter that while the VRS was distributing the bread, they were shouting at the people, mocking them and calling them names.[1146] The moment the camera stopped filming the VRS stopped handing out candy, bread and water to the crowd and even took some of it back.[1147] Moreover, shortly before his address to the crowd, Mladić was recorded in an intercepted conversation as having stated that all of the Bosnian Muslim population would be transported from Potočari, whether they wanted to or not.[1148]

277. Upon arrival of the buses at the UN compound, many of the Bosnian Muslims rushed towards them hoping that they would be taken to safety, while others were more reluctant and moved to the back of the crowd to observe events.[1149] VRS soldiers were lined up alongside the road leading to the buses.[1150] DutchBat soldiers attempted to assist the masses of Bosnian Muslims trying to board the buses at the same time[1151] by creating an area where groups of Bosnian Muslims could be placed and directed through to the buses.[1152] Mladić, present on the scene, disregarded this

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00:20:32–00:21:14 (VRS soldiers handing out candy to children), p. 54; 00:21:16–00:23:41 (VRS soldiers handing out bread to crowd), p. 54; Mile Janjić, Ex. P01096, BT. 9821 (24 May 2004); PW-063, T. 6518 (19 October 2010); PW-063, Ex. P00867, PT. 9207–9208 (22 March 2007); PW-052, Ex. P01598, PT. 8581–8582 (9 March 2007); Miroslav Deronjić, Ex. P00020a, BT. 6423 (22 January 2004).

1146 Ex. P01485, pp, 8– 9.

1147 Johannes Rutten, Ex. P02638, KT. 2125–2127 (5 April 2000) (testifying that in his view this scene was filmed as a media campaign, as it did not reflect the real events); PW-002, Ex. P01497, KT. 1521 (28 March 2000). *See also* Momir Nikolić, T. 12387, 12392–12393 (6 April 2011). The Chamber notes that documentary and testimonial evidence of Bosnian Muslim witnesses demonstrates that there was a severe lack of food and water for the people in Potočari on the days. *See supra* para. 242. The Majority, Judge Nyambe dissenting, finds that the image that the VRS intended to portray as captured on camera on 12 July did not accord with the reality of the situation on the ground, and was for propaganda purposes. In this regard, the Majority will not rely on the evidence of Miroslav Deronjić that he personally supplied food and water to the Bosnian Muslim population for the two days they were gathered in Potočari. *See* Miroslav Deronjić, Ex. P00020a, BT. 6200 (19 January 2004).

1148 An intercepted conversation at 12:40 p.m. records two speakers, X, who is Panorama (the code name for the Main Staff Headquarters) and Y, in which Y informs that they are starting the evacuation of those who want to go towards Kladanj, that they will provide them with food and water, and that those who don't want to can choose where they'll go. *See* Ex. P01565a. Just ten minutes after this intercepted conversation, however, in an intercepted conversation between Mladić and an unidentified speaker, Mladić is recorded as stating "we'll evacuate them all, those who want to and those who don't want to." *See* Ex. P00241.

1149 Eelco Koster, Ex. P01483, PT. 3089 (26 October 2006); Johannes Rutten, Ex. P02629, PT. 4888 (30 November 2006); Johannes, Rutten, T. 17856 (12 September 2011); Evert Rave, T. 6892–6893 (27 October 2010); Evert Rave, Ex. P01004, KT. 897 (21 March 2000); Robert Franken, Ex. P00598, PT. 2651–2652 (18 October 2006). Paul Groenewegen, T. 1171–1172 (15 April 2010); Paul Groenewegen, Ex. P00098, BT. 1025 (10 July 2003). *See also* Mendeljev Đurić, Ex. P01620, PT. 10809–10810 (2 May 2007). *See also* Ex. D00324, pp. 21–22; Adjudicated Fact 463.

1150 PW-023, Ex. P00060, PT. 17308–17310 (1 November 2007) (describing these individuals as "soldiers" wearing dark-green multi-coloured camouflage uniforms).

1151 Johannes Rutten, Ex. P02638, KT. 2147 (5 April 2000); Eelco Koster, Ex. P01483, PT. 3094–3095 (26 October 2006); Ex. P01485, p. 10. *See also* Mile Janjić, Ex. P01096, BT. 9772 (24 May 2004), BT. 9830–9831 (25 May 2004); Mendeljev Đurić, Ex. P01620, T.10810 (2 May 2007).

1152 Johannes Rutten, Ex. P02638, KT. 2184 (5 April 2000); Paul Groenewegen, Ex. P00098, BT. 1024–1025 (10 July 2003) (testifying that this area was intended to be a buffer zone to keep the Bosnian Serb Forces and the Bosnian Muslims separated); Eelco Koster, Ex. P01483, PT. 3073 (26 October 2006); PW-017, Ex. P02883, KT. 1256 (24 March 2000) (testifying that in front of the barricade created by the UN, UN soldiers formed two lines and tied their hands together to prevent uncontrolled passage); PW-023, Ex. P00060, PT. 17307–17308 (1 November 2007), PT. 17376–17377 (2 November 2007). The Chamber notes here that two witnesses, namely, PW-052 and PW-011, observed occasions where DutchBat soldiers interlinked hands with members of Bosnian Serb Forces to control the passage of people onto buses. PW-011, Ex. P01512 (confidential), PT. 3620 (private

area.[1153] Koster, who reported these events to his commanding officer, was told to send Mladić to Karremans, who was inside the UN compound at this time.[1154] Mladić refused, saying that he was in charge and that it was best for the DutchBat soldiers to cooperate.[1155] He told Kingori that the Bosnian Muslims would be taken to Tuzla, "to join their brothers there."[1156]

278. On some occasions, Bosnian Serb Forces pushed and shouted at the Bosnian Muslims to get on to the buses.[1157] As the boarding of the buses continued, on both 12 and 13 July, more violent force was sometimes used.[1158] The buses were loaded so full that the people inside were squashed; it was hot and the civilians were not given any food or water for on the way.[1159] Radoslav Janković assigned approximately 10–15 members of the Bratunac Brigade MP, including Mile Janjić, to count the people boarding the buses.[1160] Janjić reported this information to Janković.[1161]

279. Boering recalled an encounter between Mladić and the director of MSF on 12 July, at the start of the boarding process; the director of MSF wanted to ensure that the wounded and sick would be evacuated first, but Mladić warned her to stay out of it.[1162]

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session) (6 November 2006); PW-011, Ex. P01513, PT. 3630–3631, 3638 (6 November 2006); PW-052, Ex. P01598, PT. 8679 (12 March 2007).

1153 Eelco Koster, Ex. P01483, PT. 3088–3089 (26 October 2006); Ex. P 01485, p. 9.

1154 Ex. P01485, p. 9

1155 Eelco Koster, Ex. P01483, PT. 3048 (26 October 2006); Ex. P01485, p. 9.

1156 Joseph Kingori, Ex. P00950, PT. 19253 (13 December 2007), PT. 19444–19445 (13 January 2008).

1157 Johannes Rutten, Ex. P02629, PT. 4822 (30 November 2006); Robert Franken, Ex. P00598, PT. 2651–2652 (18 October 2006); Paul Groenewegen, Ex. P00098, BT. 1025–1026 (10 July 2003); Eelco Koster, Ex. P01483, PT. 3088–3089 (26 October 2006); Ex. P01485, p. 10. *See also* PW-052, Ex. P01598, PT. 8724 (13 March 2007); PW-002, Ex. P01497, KT. 1520–1521 (28 March 2000).

1158 Paul Groenewegen, T. 1172 (15 April 2010); PW-002, Ex. P01497, KT. 1520 (28 March 2000); Ex. P02157, p. 21; Adjudicated Fact 464.

1159 PW-002, Ex. P01497, KT. 1520–1521 (28 March 2000).

1160 Mile Janjić, Ex. P01096, BT. 9756, 9766–9769, 9773–9775, 9793–9794, 9797–9798 (24 May 2004), BT. 9841 (25 May 2004); Mile Janjić, Ex. P01094, PT. 17942–17944 (20 November 2007); Mile Janjić, T. 8841–8842 (13 December 2010). Janjić testified that Momir Nikolić had instructed him to report to Colonel Janković on 12 July 1995; Mile Janjić, Ex. P01096, BT. 9766 (24 May 2004); Mile Janjić, Ex. P01094, PT. 17927–17928 (20 November 2007).

1161 Mile Janjić, Ex. P01096, BT. 9766–9768, 9774–9775 (24 May 2004). MUP officer Milisav Ilić had also been tasked with counting the people boarding the buses, independently from Janjić. Janjić did not know who had ordered Ilić to carry out this task, or who this individual reported to. Mile Janjić, Ex. P01096, BT. 9776 (24 May 2004); Mile Janjić, Ex. P01094, PT. 17946–17947 (20 November 2007). Janjić and Ilić had a meeting with Janković after the first day of transportation during which Janković told them that they should be more careful counting the numbers of people leaving. Janjić concluded, on this basis, that Radoslav Janković also received information directly from Ilić. Mile Janjić, T. 8843–8844, 8852–8853 (13 December 2010). By the end of 12 July, the first day of transportation, Janjić had counted "9,000 and several hundreds" Bosnian Muslims having boarded the buses that left for Kladanj. Mile Janjić, Ex. P01096, T. 9775–9776 (24 May 2004). *See infra* para. 282.

1162 Pieter Boering, T. 8981 (15 December 2010).

280. After the first convoy of mainly women, children, and elderly[1163] had left Potočari on 12 July, Bosnian Serb Forces systematically[1164] separated men from the crowd.[1165] Several high-ranking officers of both the VRS and the MUP, including Mladić and Borovčanin, were present when the separation occurred.[1166] The evidence suggests that those taking a direct part in the separation process were VRS soldiers including members of the Drina Corps and Bratunac Brigade MP, elements of the 10th Sabotage Detachment, elements of the MP Battalion of the 65th Protection Regiment, the Drina Wolves, as well as members of the MUP.[1167] Questioned on this procedure by DutchBat, VRS officers, including Mladić, stated that it was aimed at determining whether there were any suspected war criminals amongst the men in the group.[1168] Boys between 12

1163 Pieter Boering, Ex. P01461, PT. 2010 (22 September 2006). Momir Nikolić testified that while some able-bodied men were allowed to board the first convoy of buses, this was done for propaganda purposes; it was filmed and intended to show the international community that nothing wrong was going on. Momir Nikolić, T. 12387, 12392–12393 (6 April 2011), T. 12635 (11 April 2011). *See also* Ex. P02157, p. 21. Nikolić added that a number of the able-bodied men who had made it onto buses of this first convoy were in fact taken off the buses and detained at checkpoints in Kravica, Konjević Polje, and in particular Tišća, just before crossing over into ABiH-held territory. Momir Nikolić, T. 12393 (6 April 2011). *See also* Ex. P02157, p. 21.

1164 Miroslav Deronjić, Ex. P00020a, BT. 6224 (20 January 2004) (stating that he became aware only later that the separation of men in Potočari was systematic, meaning that all the men were taken from the convoys). *See also* Adjudicated Fact 487 (The military aged men who fled to Potočari were systematically separated from the other refugees); Adjudicated Fact 490 (Bosnian Serb soldiers systematically separated out men of military age). The Chamber's finding that the separation of the men was systematic is furthermore supported by the overwhelming amount of testimony from members of DutchBat, members of VRS forces present on the scene, and Bosnian Muslims who witnessed the process of separation and have all given consistent evidence in this regard. *See infra* n. 1165.

1165 Johannes Rutten, Ex. P02638, KT. 2126 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4813 (29 November 2006); PW-002, Ex. P01497, KT. 1511 (28 March 2000); Joseph Kingori, T. 5504 (16 September 2010); Joseph Kingori, Ex. P00950, PT. 19251–19252, 19254 (13 December 2007); Ex. P00992, p. 11; Robert Franken, Ex. P00598, PT. 2496–2497 (16 October 2006); Evert Rave, Ex. P01004, KT. 898–899 (21 March 2000); Paul Groenewegen, Ex. P00098, BT. 1026 (10 July 2003); PW-003, Ex. P01509, BT. 6085 (17 December 2003); Ex. P01485, p. 18. *See also* Mile Janjić, Ex. P01096, BT. 9780–9781 (24 May 2004); Mile Janjić, T. 8845–8846 (13 December 2010); Momir Nikolić, T. 12635–12636 (12 April 2011); Ex. P02069, p. 2 (a report dated 12 July issued by Popović, recording that "[w]e are separating men from 17–60 years of age and we are not transporting them"). Several Bosnian Muslims also confirmed the separation process. PW-017, Ex. P02883, KT. 1257–1258 (24 March 2000); PW-023, Ex. P00060, PT. 17309 (1 November 2007); PW-071, T. 6114–6115 (closed session) (5 October 2010); Behara Krdzić, Ex. P02743 (16 June 2000), p. 2; Nura Efendić, Ex. P01528 (21 June 2000), pp. 2, 4; Hana Mehmedović. Ex. P01533 (17 June 2000), p. 4; Mirsada Malagić, T. 10036–10037 (16 February 2011); Samila Salčinović, Ex. P01524 (18 June 2000), p. 3; Meija Mešanović, Ex. P01525 (19 June 2000), p. 3; Šehra Ibišević. Ex. P01526 (21 June 2000), p. 5; PW-011, Ex. P01512 (confidential), PT. 3608 (private session) (6 November 2006); Šifa Hafizović, Ex. P01527 (16 June 2000), pp. 2–3; PW-012, Ex. P01518, PT. 3312 (31 October 2006).

1166 Momir Nikolić, T. 12386 (6 April 2011); Joseph Kingori, Ex. P00950, PT. 19252 (13 December 2007).

1167 Ex. P02157, p. 20; Mile Janjić, Ex. P01096, BT. 9780-9781 (24 May 2004); Mile Janjić, T. 8844–8846 (13 December 2010). *See also e.g.,* PW-023, Ex. P00060, PT. 17308–17311 (1 November 2007); PW-073, Ex. P00048 (confidential), pp. 46–47.

1168 Evert Rave, Ex. P01004, KT. 899–900 (21 March 2000); Johannes Rutten, Ex. P02629, PT. 4853–4855 (30 November 2006); Johannes Rutten, T. 17868 (12 September 2011). UNMO member Kingori was told by one VRS soldier that the men were being separated because they would be transported separately, while another VRS soldiers told him that the men would be taken to Bijeljina to be exchanged for Bosnian Serb POWs. Ex. P00992, p. 11. When speaking to other VRS soldiers, however, it became clear to Kingori that the aim of the separation was to make sure that they could identify the soldiers and take them elsewhere. Joseph Kingori, Ex. P00950, PT. 19252 (13 December 2007). *See also* Ex. D00324, pp. 16, 19.

and 15 years of age, as well as old men, who could barely walk, were observed being separated.[1169] UNMO member Kingori and DutchBat officer Koster protested and tried to intervene when they saw young boys being separated; while a number of separations were deterred as a result, youngsters continued to be separated.[1170] The men that were being separated wore civilian clothing, and the Majority finds, Judge Nyambe dissenting,[1171] that they were not separated by virtue of being suspected war criminals.[1172] The separation of men took place throughout 12 and 13 July.[1173] The process instilled fear in the Bosnian Muslims still waiting to be transported[1174] and grief to those who were separated from their male family members.[1175] The separated men were subsequently detained by Bosnian Serb Forces at several locations around the UN compound, most notably in the White House.[1176]

(c) Transport of Women, Children and Elderly to Kladanj

281. At around 2 p.m. on 12 July 1995,[1177] as the women, children and elderly started to board the first buses and trucks that arrived, Franken assigned several DutchBat officers to accompany the convoys as escorts.[1178] The first convoy consisted of about 10–14 buses and several trucks.[1179] It was escorted by two UN vehicles, one at the front, and one at the back.[1180] This first convoy was led by Kosorić.[1181]

1169 Johannes Rutten, Ex. P02629, PT. 4853–4854 (30 November 2006). *See also* Samila Salčinović, Ex. P01524 (18 June 2000), p. 2; Šehra Ibišević, Ex. P01526 (21 June 2000), p. 2; Šifa Hafizović, Ex. P01527 (16 June 2000), pp. 2–3. *See also* Ex. D00324, pp. 16, 18. *See also* Adjudicated Fact 490.

1170 Ex. P00992, p. 11; Joseph Kingori, Ex. P00950, PT. 19254–19255 (13 December 2007). *See also* Ex. P01485, p. 13; Adjudicated Fact 492.

1171 *See* Dissenting and Separate and Concurring Opinions of Judge Prisca Matimba Nyambe, para. 40.

1172 Evert Rave, Ex. P01004, KT. 932 (21 March 2000). *See also* Adjudicated Fact 491. *See also infra* para. 1068.

1173 *See, e.g.,* Paul Groenewegen, Ex. P00098, BT. 1029 (10 July 2003); Mile Janjić, Ex. P01096, BT. 9797–9798 (24 May 2004). *See also* Ex. P01485, p. 13; Adjudicated Fact 493.

1174 Evert Rave, Ex. P01004, KT. 905–906 (21 March 2000); Joseph Kingori, Ex. P00950, PT. 19251–19252 (13 December 2007).

1175 Joseph Kingori, Ex. P00950, PT. 19251–19252 (13 December 2007). *See also* PW-073, Ex. P00048 (confidential), pp. 73–74; Rahima Malkić, Ex. P01521 (17 June 2000), pp. 2–3.

1176 *See infra* para. 285.

1177 *See, e.g.,* Ex. P01335, pp. 2–3; Momir Nikolić, T. 12387 (6 April 2011); PW-023, Ex. P00060, PT. 17307 (1 November 2007). *See also* Ex. P02528, p. 1 (a Daily Combat report of the Bratunac Brigade to the Drina Corps Command dated 12 July 1995, signed by Vidoje Blagojević and containing a time reference of 4:30 p.m., states that, *inter alia,* the transport of the "Turkish population" from Potočari towards Kladanj is in progress)

1178 Robert Franken, Ex. P00598, PT. 2494 (16 October 2006); Vincentius Egbers, Ex. P01142, PT. 2720 (18 October 2006), PT. 2895, 2921 (20 October 2006); Vincentius Egbers, T. 7192 (2 November 2010); Pieter Boering, Ex. P01461, PT. 2019–2020 (22 September 2006), PT. 2158 (25 September 2006). *See also* Johannes Rutten, Ex. P02629, PT. 4904 (30 November 2006); PW-003, Ex. P01509, BT. 6087–6088 (17 December 2003); Evert Rave, Ex. P01004, KT. 898, 901 (21 March 2000). One of the Muslim civilian representatives told Rave that he had been informed by representatives of the BiH government in Bosnia that the buses should not leave without a UN escort because they had doubts about Mladić's guarantee of security. Evert Rave, Ex. P01004, KT. 907 (21 March 2000). *See also* Richard Butler, T. 16649–16650 (14 July 2011).

1179 *See* Vincentius Egbers, Ex. P01142, PT. 2803–2804 (19 October 2006) (approximating 12–14 buses); Ex. P01148, p. 11; Pieter Boering, Ex. P01461, PT. 2020 (22 September 2006) (approximating ten buses and about six trucks); PW-003, Ex. P01509, BT. 6088 (17 December 2003) (approximating eight buses).

1180 Vincentius Egbers, Ex. P01142, PT. 2720 (18 October 2006), PT. 2804 (19 October 2006); Ex. P01147, p. 2;

282. The convoys of the vehicles transporting women, children, and elderly travelled towards Kladanj through Bratunac, Glogova, Kravica, Sandići, Milići, Maglići, and Vlasenica, ending up at Tišća, in the Luke area.[1182] On their way, the buses were sometimes stopped and Bosnian Serb Forces entered searching for men or demanding money.[1183] Upon arrival in the Luke area, the Bosnian Muslims got off the buses and continued their journey to the border point of the RS territory in Kladanj on foot.[1184] From Kladanj, the Bosnian Muslims were taken by bus to a refugee camp in Dubrave, near Tuzla.[1185] In Tuzla, they were met by UNPROFOR officers.[1186] Thomas Dibb, who addressed the crowd of Bosnian Muslims arriving, described them as physically drained, and very worried about the male members of their families, who were not with them.[1187] By the end of 12 July 1995, over 9,000 Bosnian Muslim women, children, and elderly had been transported from Potočari.[1188] The Bosnian Muslims remaining in the UN compound during the night of 12–13 July were mainly those who did not want to board the buses.[1189]

Ex. P01148, p. 11. Pieter Boering testified that at first the arrangement was that at least one or two DutchBat soldiers should accompany each bus inside it, but this did not work out. Pieter Boering, Ex. P01461, PT. 2010 (22 September 2006). Evert Rave testified that the buses were too crowded for DutchBat officers to board. Evert Rave, Ex. P01004, KT. 898 (21 March 2000). *See also* Adjudicated Facts 468, 469.

1181 Pieter Boering, Ex. P01461, PT. 2020 (22 September 2006) (referring to a VRS officer called "Kosavić" or "Kosarić", who he believed was the "somewhat organiser of the general events"); Pieter Boering, T. 8976–8977 (15 December 2010). Boering identifies the VRS officer who led the first convoy in a photograph, depicting participants of the third Hotel Fontana meeting. Pieter Boering, T. 8980 (15 December 2010); Ex. P00624, p. 37. The Chamber notes that the person identified by Boering is Chief of Intelligence of the Drina Corps, Svetozar Kosorić. Boering testified, further, that Kosorić was the "driving force" enabling the convoy to move through checkpoints en route to Kladanj. Pieter Boering, T. 8979 (15 December 2010).

1182 Pieter Boering, Ex. P01461, PT. 2021 (22 September 2006); Hana Mehmedović. Ex. P01533 (17 June 2000), pp. 2, 6; Samila Salčinović, Ex. P01524 (18 June 2000), p. 2; Meija Mešanović, Ex. P01525 (19 June 2000), p. 2. Several witnesses have described the same route, but stated that the end stop was "in Luke" or the "Luke area". PW-003, Ex. P01509, BT. 6088 (17 December 2003) *See also* PW-052, Ex. P01598, PT. 8586 (9 March 2007) PW-017, Ex. P02883, KT. 1258–1259 (24 March 2000); PW-017, T. 672 (18 March 2010); Ex. P00054 (PW-017 marked the route his bus took on this map). *See also* Vincentius Egbers, Ex. P01142, PT. 2753 (19 October 2006) (testifying that the convoys on 13 July took the same route). *See also* Adjudicated Facts 459, 462, 476, 479.

1183 *See, e.g.,* Mirsada Gabeljić, Ex. P01529 (18 June 2000), pp. 2–3; Šehra Ibišević, Ex. P01526 (21 June 2000), pp. 2, 5.

1184 Pieter Boering, Ex. P01461, PT. 2022, 2025 (22 September 2006); PW-003, Ex. P01509, BT. 6088 (17 December 2003). *See also* Nura Efendić, Ex. P01528 (21 June 2000), pp. 2, 4; Hana Mehmedović, Ex. P01533 (17 June 2000), p. 6; Mirsada Malagić, T. 10039 (16 February 2011); Samila Salčinović, Ex. P01524 (18 June 2000), p. 2; Meija Mešanović, Ex. P01525 (19 June 2000), p. 2; Erin Gallagher, T. 6694–6695 (21 October 2010). From the drop-off point in the Luke area, the Bosnian Muslims had to walk approximately 5–7 kilometres to reach "free territory". Erin Gallagher, T. 6695 (21 October 2010); Richard Butler, T. 16646–16647 (14 July 2011) (testifying about Ex. P01566a); Adjudicated Fact 477.

1185 Nura Efendić, Ex. P01528 (21 June 2000), pp. 2, 4. *See also* Šehra Ibišević. Ex. P01526 (21 June 2000), p. 5; Hana Mehmedović, Ex. P01533 (17 June 2000), p. 6 (stating that they were met in Kladanj by "Bosniaks" and then taken to Dubrave); Thomas Dibb, T. 4895–4897 (6 September 2010). There is no information as to who transported the Bosnian Muslims from Kladanj to Tuzla.

1186 Thomas Dibb, Ex. P00741, PT. 16269 (15 October 2007).

1187 Thomas Dibb, T. 4895–4896 (6 September 2010); Thomas Dibb, Ex. P00741, PT. 16269 (15 October 2007).

1188 Mile Janjić, Ex. P01096, BT. 9775–9776, 9787–9788 (24 May 2004). Janjić estimated that there were about 70 people per bus, taking into account the fact that in addition to 52–54 seats, about 15–30 people could stand in the aisles. While he first counted each individual entering the buses, it soon became too crowded and instead, he suggested to Radoslav Janković that they count on the basis of vehicles and not people. Mile Janjić, Ex. P01094, PT. 17942–17944 (20 November 2007). Janjić calculated that on average, the trucks leaving Potočari carried about 170 people. Mile Janjić, T. 8843 (13 December 2010). *See also* Ex. P02531 (a report by Dragomir Vasić, the Chief of the Zvornik CJB, dated 13 July 1995, in which he submits that 15,000 Bosnian Muslims still needed to be

283. At around 7:00 a.m the next morning, 13 July 1995, the transportation of women, children, and elderly to Kladanj resumed[1190] and lasted until the early evening.[1191] Documentary and other evidence demonstrate that on 13 July 1995, the MUP started to take a more central role in the transportation process, as the VRS became more engaged in operations towards Žepa.[1192]

284. On both 12 and 13 July, as the buses drove through Bratunac, Bosnian Serb civilians mocked the Bosnian Muslims in the buses, cursed at them, threw stones at the buses, and were celebrating their departure.[1193] While some of the first convoys on 12 July were successfully escorted towards Kladanj,[1194] DutchBat escorts thereafter, on both 12 and 13 July, started to encounter harassment by Bosnian Serb Forces positioned along the road to Kladanj;[1195] they were stopped, and in some cases, their vehicles, weapons, ammunition, other equipment and even their clothes were taken away from them.[1196] Some were threatened at gunpoint.[1197] Many of the buses

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transported to Kladanj that day). The estimation provided by Janjić and the amount of people referred to in Vasić's report are consistent with the total number of Bosnian Muslims the Chamber has earlier found were present in Potočari by 12 July 1995.

1189 Paul Groenewegen, Ex. P00098, BT. 1028 (10 July 2003).

1190 *See, e.g.,* Ex. P00992, p. 12; Evert Rave, Ex. P01004, KT. 908 (21 March 2000); Paul Groenewegen, Ex. P00098, BT. 1027–1028 (10 July 2003). *See also* Ex. P01485, pp. 12–13; Mile Janjić, Ex. P01096, BT. 9793–9794 (24 May 2004); PW-052, Ex. P01598, PT. 8607–8608 (9 March 2007); Mendeljev Đurić, Ex. P01620, PT. 10815–10816 (2 May 2007).

1191 Evert Rave, Ex. P01004, KT. 915 (21 March 2000); Robert Franken, Ex. P00598, PT. 2504 (16 October 2006). *See also* Adjudicated Fact 478.

1192 *See* Ex. P02531; Ex. P02238, p. 1. *See also* Richard Butler, T. 16660 (14 July 2011). *See also* PW-052, Ex. P01598, PT. 8587 (9 March 2007). The Majority, Judge Nyambe dissenting, has already established, in paragraph 262 above, that various MUP units, under command of Borovčanin—including the 1st Company of Jahorina Recruits—arrived in Potočari on the morning of 12 July and took an active part in the transportation operation organized by the VRS. *See also* Adjudicated Fact 473.

1193 Vincentius Egbers, Ex. P01142, PT. 2720–2721 (18 October 2006) (testifying that as the buses left Bratunac, there were a lot of "people" celebrating, drinking, screaming and yelling and throwing stones at buses passing through the town), PT. 2753 (19 October 2006); Vincentius Egbers, T. 7507 (9 November 2010); Momir Nikolić, T. 12388 (6 April 2011). Momir Nikolić testified that many of the Bosnian Serbs that had lost family and or property felt hatred and intolerance towards the Bosnian Muslims. Momir Nikolić, T. 12635 (12 April 2011). *See also* Nura Efendić, Ex. P01528 (21 June 2000), p. 4. *See also* Adjudicated Fact 475.

1194 Vincentius Egbers, Ex. P01142, PT. 2747–2748, 2756 (19 October 2006); Vincentius Egbers, T. 7090 (1 November 2010). *See also* Robert Franken, Ex. P00598, PT. 2494 (16 October 2006) (testifying that after the first convoys had departed, he had received reports from the Pakistani UN battalion in the area of Kladanj confirming the arrival of these convoys). Such confirmation was received by Franken during the time that his escorts were operational. *Ibid.*

1195 PW-052, Ex. P01597 (confidential), PT. 8600–8601 (private session) (9 March 2007) (testifying that 170 members of the 1st Company of Jahorina Recruits were deployed en route from Bratunac to Konjević Polje); Vincentius Egbers, Ex. P01142, PT. 2721 (18 October 2006), PT. 2753 (19 October 2006) (referring to Bosnian Serb soldiers gathering around the road as the buses left Bratunac, and along the road to Nova Kasaba and Milići).

1196 Robert Franken, Ex. P00598, PT. 2495–2496 (16 October 2006) (Franken suspected that the harassment had been ordered from the fact that it was organised and began suddenly after the first convoys had passed); Vincentius Egbers, Ex. P01142, PT. 2721, 2723–2724 (18 October 2006), PT. 2753, 2767 (19 October 2006); Vincentius Egbers, T. 7083 (1 November 2010). Egbers testified that the stripping of UN escorts happened also to other DutchBat officers and he considered this to be a coordinated activity by the VRS. Vincentius Egbers, T. 7096–7097 (1 November 2010). *See also* Johannes Rutten, Ex. P02638, KT. 2154–2156 (5 April 2000). Rave stated that as a result of DutchBat escort vehicles being stolen, either Karremans or Franken set up four mobile check-points on the road to observe whether buses were passing. Evert Rave, Ex. P01004, KT. 910–911, 940–941(21 March 2000). *See also* Adjudicated Facts 467, 469, 470.

and trucks continued unaccompanied as a result.[1198] Some of the DutchBat officers that had managed to escort the first convoys to Kladanj were stopped in Nova Kasaba on their way back to Potočari.[1199] While most of the convoys headed to Kladanj unaccompanied, the women, children, and elderly transported from Potočari on these two days ultimately made it to Tuzla in ABiH-held territory.[1200]

(d) Men Detained at the "White House" and Subsequent Transportation to Bratunac

285. The men who were separated from the women, children, and elderly on both 12 and 13 July 1995 were directed by Bosnian Serb Forces[1201] to several empty houses near the UN compound,[1202] most notably to an unfinished building just in front of the compound referred to as the White House.[1203] Before entering the White House, Bosnian Serb Forces ordered the men to leave behind their personal belongings,[1204] including identification documents and money.[1205] Bosnian Serb

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1197 Johannes Rutten, Ex. P02638, KT. 2154–2155 (5 April 2000); PW-003, Ex. P01509, BT. 6098–6099 (17 December 2003) (testifying about a convoy of about four or five buses that left Potočari on 13 July 1995). *See also* Adjudicated Fact 471.

1198 Robert Franken, Ex. P00598, PT. 2494–2495 (16 October 2006); Vincentius Egbers, Ex. P01142, PT. 2767 (19 October 2006); Johannes Rutten, Ex. P02638, KT. 2156 (5 April 2000). *See also* Ex. P01485, p. 10.

1199 Vincentius Egbers, Ex. P01142, PT. 2756–2757, 2765–2766 (19 October 2006); Vincentius Egbers, T. 7189, 7192 (2 November 2010); Ex. P01145, pp. 5–6; Ex. P01146, p. 2; Ex. P01147, p. 6. *See infra* para. 340.

1200 Johannes Rutten, Ex. P02638, KT. 2186–2187, 2197–2198 (5 April 2000) (testifying that they saw and heard later that women and children from Srebrenica arrived in Tuzla); Joseph Kingori, Ex. P01949, T. 14151–14152 (22 August 2010) (testifying that 20,000 mainly Bosnian Muslim women arrived in Tuzla within 24 hours on 12 and 13 July); Thomas Dibb, T. 4895–4896 (6 September 2010). *See also* Ex. P00748, p. 1 (cable-code from Akashi to Annan on 19 July 1995, reporting that by 19 July, the number of displaced persons that arrived in Tuzla and had been put up in various collective centres there amounted to approximately 25,000).

1201 PW-023 testified that the forces that directed the men to the White House were the same as the forces who separated them. PW-023, Ex. P00060, PT. 17310 (1 November 2007). PW-011, however, testified that the people directing her brother to the White House were not the same as the people who separated him from the crowd. PW-011, Ex. P01512 (confidential), PT. 3608 (private session) (6 November 2006). The Chamber finds that the forces taking part in the separation process and those that directed the men to the White House and detained them were intermingled and that PW-023 and PW-011's testimony does not conflict on this point. The Chamber recalls that it has found, above, that the forces involved in the separation of men comprised of elements of the VRS as well as the MUP. *See supra,* para. 280.

1202 Johannes Rutten, Ex. P02629, PT. 4815–4816 (29 November 2006), PT. 5263–5264 (7 December 2006).

1203 *See, e.g.,* Robert Franken, Ex. P00598, PT. 2497 (16 October 2006); PW-003, Ex. P01509, BT. 6085 (17 December 2003); Evert Rave, Ex. P01004, KT. 898–899 (21 March 2000); Johannes Rutten, Ex. P02638, KT. 2129–2130 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4815–4816 (29 November 2006), PT. 5214–5215, 5217 (7 December 2006); Ex. P02632; Ex. P02633; Ex. P00992, p. 11; Pieter Boering, Ex. P01461, PT. 2012 (22 September 2006); Ex. P01478; PW-002, Ex. P01497, KT. 1512 (28 March 2000); Ex. P01498. *See also e.g.,* PW-011, Ex. P01512 (confidential), PT. 3612, 3616–3617, 3650–3652 (private session) (6 November 2006); Ex. P01514; Ex. P01515; PW-023, Ex. P00060, PT. 17310–17311 (1 November 2007), PT. 17378 (2 November 2007); PW-017, T. 670–671 (18 March 2010); Ex. P00053 (confidential); PW-073, Ex. P00048 (confidential), pp. 66–67. *See also* Jean-René Ruez, T. 916 (29 March 2010); Ex. P00094, p. 12; Tomasz Blaszczyk, T. 7578 (10 November 2010); Ex. P01344. *See also* Adjudicated Fact 495.

1204 Robert Franken, Ex. P00598, PT. 2497 (16 October 2006); Johannes Rutten, Ex. P02638, KT. 2132, 2134 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4893 (30 November 2006); Joseph Kingori, Ex. P00950, PT. 19251 (13 December 2007); Evert Rave, Ex. P01004, KT. 899 (21 March 2000). *See also* PW-011, Ex. P01512 (confidential), PT. 3611 (private session) (6 November 2006). *See also* Tomasz Blaszczyk, T. 7551 (10 November 2010); Ex. P01251, pp. 16–17. The Chamber notes, here, Mile Janjić's testimony that he did not see anyone issuing an order to this effect. He assumed that the men were asked to leave their luggage outside for reasons of security and safety of Mladić and all other policemen and officers present. Mile Janjić, Ex. P01096, BT. 9783–9784 (24 May 2004). In light of the events described further on in this section (see *infra,* paras. 286–289) the

Forces were standing guard at the house.[1206] Momir Nikolić testified that the men who were separated were mistreated, beaten and cursed at.[1207] The Bosnian Muslim men were first gathered inside the house.[1208] As it became more crowded, they spilled out onto the yard and the balcony of the house.[1209] By the afternoon of 13 July, the number of men detained increased and the White House was packed with Bosnian Muslim men.[1210] The conditions in the White House were poor; it was overcrowded and there was not enough ventilation or water for the men.[1211]

286. During the course of 12 July, DutchBat started to receive reports of Bosnian Muslims men being mistreated at the White House.[1212] On 12 and 13 July, several DutchBat officers as well as UNMO member Kingori went to the house and attempted to assess the situation.[1213] Those who managed to enter the house saw Bosnian Muslims men inside the house, including boys between 12 and 14[1214] as well as elderly men,[1215] looking very scared.[1216] Piles of identification cards were observed both inside and outside the house on these days.[1217] One of the Bosnian Muslim men was

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Majority, Judge Nyambe dissenting, does not consider this to have been the reason why these men were told to leave their belongings outside the White House.

1205 Johannes Rutten, Ex. P02638, KT. 2132, 2134, 2195 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4893 (30 November 2006); Johannes Rutten, T. 17872 (12 September 2011); Joseph Kingori, T. 5355 (14 September 2010). *See also* Adjudicated Facts 494, 496–498, 501.

1206 Pieter Boering, Ex. P01461, PT. 2012 (22 September 2006); Johannes Rutten, Ex. P02638, KT. 2132 (5 April 2000). Rutten describes the soldiers he observed in and around the White House as soldiers of the "Bosnian Serb army", all wearing green camouflage uniforms. Johannes Rutten, Ex. P02638, KT. 2152–2153 (5 April 2000). *See also* PW-023, Ex. P00060, PT. 17311 (1 November 2007) (stating that some of these soldiers threatened the Bosnian Muslim men with knives, telling them they would slit their throats, while other soldiers told those threatening the Bosnian Muslim men to leave them alone and not to touch them).

1207 Momir Nikolić, T. 12386–12387 (6 April 2011).

1208 PW-023, Ex. P00060, PT. 17311 (1 November 2007); PW-073, Ex. P00048 (confidential), pp. 9–10. *See also* Tomasz Blaszczyk, T. 7558 (10 November 2010); Ex. P01339.

1209 *See* PW-023, Ex. P00060, PT. 17312 (I November 2007); PW-017, T. 670–671 (18 March 2010); Mile Janjić, Ex. P01096, BT. 9782, 9797–9798 (24 May 2004); Mile Janjić, Ex. P01094, PT. 17944 (20 November 2007); Johannes Rutten, Ex. P02629, PT. 4971–4972 (4 December 2006). *See also* Jean-René Ruez, T. 916–918 (29 March 2010); Ex. P00094, p. 13. *See also* Adjudicated Fact 502.

1210 Johannes Rutten, Ex. P02638, KT. 2150 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4862–4863 (30 November 2006) (estimating that at this time, there were about 300); Mile Janjić, Ex. P01094, PT. 17944–17945 (20 November 2007) (estimating that by 13 July, there were about two to three times more Bosnian Muslim men detained there than on 12 July).

1211 Joseph Kingori, T. 5354 (14 September 2010); Joseph Kingori, Ex. P00950, PT. 19250 (13 December 2007); Johannes Rutten, Ex. P02629, PT. 4863 (30 November 2006); PW-023, Ex. P00060, PT. 17311 (1 November 2007). *See also* Richard Butler, T. 16636 (14 July 2011).

1212 Robert Franken, Ex. P00598, PT. 2497–2499 (16 October 2006).

1213 Robert Franken, Ex. P00598, PT. 2497–2499 (16 October 2006). *See also* PW-003, Ex. P01509, BT. 6086 (17 December 2003).

1214 Johannes Rutten, Ex. P02638, KT. 2135 (5 April 2000); Johannes Rutten, T. 17874 (12 September 2011). *See also supra* para. 280.

1215 PW-023, Ex. P00060, PT. 17313 (1 November 2007).

1216 Johannes Rutten, Ex. P02638, KT. 2150 (5 April 2000) (testifying that one could "smell death" in the White House); Vincentius Egbers, Ex. P01142, PT. 2750–2751 (19 October 2006). Egbers tried to communicate with these men to tell them that they would be taken to safety in Kladanj. The men did not believe him and made a signal drawing their right forefinger from the left to right side across their neck, indicating to Egbers that they thought they would be killed. Vincentius Egbers, Ex. P01142, PT. 2751–2752 (19 October 2006); Vincentius Egbers, T. 7082–7083 (1 November 2010).

1217 Pieter Boering, Ex. P01461, PT. 2012 (22 September 2006); Johannes Rutten, Ex. P02638, KT. 2132, 2149 (5 April 2000). In a part of the house where there were no Bosnian Muslim men, Rutten observed photographs of men spread out on the ground, couches and beds in an even fashion, and concluded that this must have been done

hanging from the staircase by one arm, his feet a few centimetres above the ground.[1218] Rutten observed several men placed in separate rooms and was not allowed to enter those rooms.[1219] Boering, Rutten and Kingori testified that when they entered the house, on separate occasions, they were threatened at gunpoint to leave.[1220] Franken complained to Radoslav Janković about the treatment of the men in the White House, but to no avail.[1221]

287. On 12 July, outside the White House, Boering saw a number of VRS soldiers including Mladić's bodyguard, who told him to "[p]ay attention to what we're doing" heading towards the back of the building; Boering was prevented from following these men by other VRS soldiers who were accompanied by dogs.[1222] Soon after, he heard shots fired behind the building.[1223]

288. On the night of 12 July, Franken was approached by one of the civilian representatives of the Bosnian Muslims gathered in Potočari, Ibro Nuhanović, who pleaded with DutchBat to try to stop the "evacuation" because he feared for the fate of the men.[1224] Having received more reports of the deteriorating situation in the White House, Franken asked some of the Bosnian Muslim representatives who had been present at the Hotel Fontana[1225] to register the names of the men remaining in the UN compound, with the intention to forward this list to his superiors in the Netherlands requesting that it be made public, and hoping that the treatment of the men would improve upon their identities being known.[1226] When they attempted to carry out this task, the

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in order to look for someone in particular. Johannes Rutten, Ex. P02638, KT. 2132–2133, 2137 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4897–4898 (30 November 2006).

1218 Johannes Rutten, Ex. P02638, KT. 2134 (5 April 2000). Rutten asked a VRS soldier to lower this man. *Ibid. See also* Robert Franken, T. 3366 (30 June 2010). Franken testified that there were several Bosnian Muslim men in this same predicament, and stated that members of DutchBat who made it into the White House cut some of these men loose so that they could be lowered to the ground. *See also* Robert Franken, T. 3366 (30 June 2010).

1219 Johannes Rutten, Ex. P02638, KT. 2134 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4853, 4857, 4860 (30 November 2006); Johannes Rutten, T. 17868 (12 September 2011). Rutten testified that he assumed that interrogation occurred in the White House. Johannes Rutten, Ex. P02629, PT. 4857–4858 (30 November 2006). The Chamber notes the testimony of PW-073 that upon being detained in the White House, the prisoners were told they would be interrogated and then taken to Tuzla. PW-073, Ex. P00048 (confidential), p. 10.

1220 Pieter Boering, Ex. P01461, PT. 2012 (22 September 2006); Johannes Rutten, Ex. P02638, KT. 2133–2134 (5 April 2000). Rutten stated that a Bosnian Serb soldier wearing a green camouflage uniform put a gun in his mouth, forcing him to leave the house. *Ibid.* Joseph Kingori, T. 5576 (20 September 2010); Ex. P00992, p. 9. Kingori was denied entry to the White House and threatened to be shot if he dared to do so. *Ibid. See also* Adjudicated Fact 504.

1221 Robert Franken, T. 3365–3367 (30 June 2010). Boering had reported his observations of the separation of the men to Franken. Pieter Boering, Ex. P01461, PT. 2082 (22 September 2006).

1222 Pieter Boering, Ex. P01461, PT. 2012–2013 (22 September 2006).

1223 Pieter Boering, Ex. P01461, PT. 2013, 2016 (22 September 2006). *See also* Adjudicated Facts 559, 560. The Chamber has made findings on the opportunistic killings alleged to have occurred in Potočari on these days below, at paragraphs 305–309 below.

1224 Robert Franken, Ex. P00598, PT. 2504 (16 October 2006). *See also* Evert Rave, Ex. P01004, KT. 905–907 (21 March 2000). The Bosnian Muslim representatives felt that the UN was not able to protect them because Mladić was dictating what was happening and the UN was not in control. Evert Rave, Ex. P01004, KT. 905 (21 March 2000).

1225 *See* Annex C: Confidential Annex.

1226 Robert Franken, Ex. P00598, PT. 2500–2502 (16 October 2006). *See also* Ex. P01485, pp. 18–19; Adjudicated Fact 448.

Bosnian Muslim representatives were intimidated by the VRS.[1227] Bosnian Muslim men feared that giving their names would put them even further at risk[1228] and as a result, the representatives were not able to convince many of the men to sign.[1229] Ultimately, a list of names of only 251 Bosnian Muslim men out of approximately 1,000–2,000[1230] present in and around the UN compound was compiled.[1231]

289. On both 12 and 13 July, buses, organised by the VRS,[1232] arrived at the White House to transport the Bosnian Muslim men from Potočari.[1233] Force was used to push the men onto the

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1227 Robert Franken, Ex. P00598, PT. 2501–2502 (16 October 2006); Robert Franken, T. 3368 (30 June 2010).

1228 *See* Adjudicated Fact 451.

1229 Evert Rave, Ex. P01004, KT. 914 (21 March 2000); *See* Annex C: Confidential Annex.

1230 Mile Janjić, one of the members of the Bratunac MP who was assigned by Radoslav Janković to count the numbers of Bosnian Muslims boarded on to buses, that on 12 July, he counted approximately 10–15 buses loaded with men, and that each of these buses contained approximately 70 men. Mile Janjić, Ex. P01094, PT. 17941–17942, 17944 (20 November 2007). He testified, further, that on the second day, 13 July, there were by far more men separated than the previous day. Mile Janjić, Ex. P01094, PT. 17945 (20 November 2007). Janjić's estimation of men transported from Potočari would lend support to the finding that the numbers of men present in Potočari ranged between 1,000–2,000. The Chamber notes that Momir Nikolić, in his plea agreement, likewise estimated that there were approximately, 1,000–2,000 able-bodied men amongst the crowd of Bosnian Muslims gathered in Potočari. *See* Ex. P02157, p. 19. During his testimony in this trial, Momir Nikolić, after confirming—as already found by the Chamber—that some of the men made it onto the buses of the first convoy on 12 July, confirmed the number of 600–700 men being separated on 12 and 13 July, as put to him by the Accused. Momir Nikolić, T. 12636 (12 April 2011). The Chamber also notes Rave's estimate of the number of Bosnian Muslim men present in Potočari at the start of the evacuation to be around 600. Rave added, however, that he could not be sure of this number and this would be his "guess". Evert Rave, Ex. P01004, KT. 937–938 (21 March 2000). In a statement to the Dutch Parliamentary Committee of Inquiry on Srebrenica, DutchBat member Leendert van Duijn stated that there were approximately 1,000 Bosnian Muslim men in Potočari. Ex. D00324, p. 13. Groenewegen, moreover, testified that he saw several hundreds of men being separated on 13 July alone. Paul Groenewegen. Ex. P00098, BT. 1031 (10 July 2003). Taking this evidence together, and giving particular weight to the testimony of Mile Janjić, who was personally involved in the counting of the men, and, moreover, has no motive to provide the Chamber with false information in this regard, the Chamber finds that there were approximately 1,000–2,000 Bosnian Muslim men present in Potočari on 12 and 13 July. The Chamber's finding of the number of the men ultimately separated is made below. *See infra* para. 293.

1231 Robert Franken, Ex. P00598, PT. 2502 (16 October 2006), PT. 2683 (18 October 2006). Ex. P00600 contains the list of names of the men. On the final page, the final tally of signatures is counted as 239, but Franken explained that he had miscounted and later determined that the list contained 251 names. *Ibid. See also* Adjudicated Fact 450. Franken informed Radoslav Janković of the existence of the list, transmitted it on a secure connection to Tuzla, Sarajevo, both UN Headquarters, and to the Dutch Crisis Staff in The Hague, and brought the original on his own person when he was evacuated to Zagreb. Robert Franken, Ex. P00598, PT. 2503 (16 October 2006). *See also* Evert Rave, Ex. P01004, KT. 914 (21 March 2000) (testifying that this list was faxed to Tuzla so that someone could determine whether the men arrived there). The Chamber notes here that the list contains the name of Mirsada Malagić's eldest son, Elvir Malagić, who she last saw on board a truck driven by UNPROFOR heading towards Potočari after the fall of Srebrenica. *See* Mirsada Malagić, T. 10022, 10041 (16 February 2011).

1232 Johannes Rutten, Ex. P02638, KT. 2150–2151 (5 April 2000). Rutten rejected the notion that buses arrived at the White House as a result of the request by DutchBat to Bosnian Serb Forces, testifying that the arrival of buses was clearly pre-arranged by the Bosnian Serb Forces, who were in control. Johannes Rutten, Ex. P02629, PT. 4865–4868 (30 November 2006), PT. 4975 (4 December 2006). Rutten formed the opinion that there was a plan by the Bosnian Serb soldiers, already in existence at the time of DutchBat's request, to transport these men away from the White House. Johannes Rutten, Ex. P02629, PT. 4975 (4 December 2006).

1233 Robert Franken, Ex. P00598, PT. 2498 (16 October 2006). *See also* Vincentius Egbers, Ex. P01142, PT. 2751 (19 October 2006); Vincentius Egbers, T. 7192–7193 (2 November 2010); Johannes Rutten, Ex. P02638, KT. 2128, 2130 (5 April 2000); Evert Rave, Ex. P01004, KT. 900, 912–913 (21 March 2000); Paul Groenewegen, Ex. P00098, BT. 1031–1032 (10 July 2003); PW-003, Ex. P01509, BT. 6087 (17 December 2003). *See also* PW-023, Ex. P00060, PT. 17313–17314 (1 November 2007); PW-073, Ex. P00048 (confidential), pp. 9–10; PW-011, Ex. P01512 (confidential), PT. 3617 (private session) (6 November 2006); Mile Janjić, Ex. P01096, BT. 9784–

buses.[1234] They were not allowed to take their belongings with them.[1235] The men were afraid, some were trying to escape and screaming that they did not want to get on the buses,[1236] others were just quiet, looking scared.[1237] Members of the MUP's Jahorina Recruits as well as some members of the MP got on to these buses with the Bosnian Muslim men and left with them.[1238] Rave observed Bosnian Muslim men in one of the buses being ordered to sit with their heads facing downwards.[1239] PW-003 witnessed one Bosnian Muslim being severely beaten in one of the buses.[1240] The buses drove off in the direction of Bratunac.[1241]

290. As he had done with the buses of women and children leaving Potočari,[1242] Franken ordered a DutchBat officer to escort the first busloads of men leaving on 12 July.[1243] The escort was stopped by members of the Bosnian Serb Forces in Bratunac,[1244] and DutchBat did not receive any information as to what happened to these men.[1245] Subsequent attempts by DutchBat to find out what happened to the men transported from the White House towards Bratunac were equally unsuccessful.[1246]

9785 (24 May 2004), BT. 9844–9845 (25 May 2004); Mile Janjić, Ex. P01094, PT. 17944 (20 November 2007); Adjudicated Fact 508.

1234 Evert Rave, Ex. P01004, KT. 901 (21 March 2000); Joseph Kingori, Ex. P00950, PT. 19255–19256 (13 December 2007). *See also* PW-011 Ex. P01512 (confidential), PT. 3617–3618 (private session) (6 November 2006). The Chamber notes the testimony of Mile Janjić that he did not know who ordered the men to board the buses. Mile Janjić, Ex. P01096, BT. 9786 (24 May 2004).

1235 Joseph Kingori, Ex. P00950, PT. 19256 (13 December 2007); PW-011 Ex. P01512 (confidential), PT. 3618 (private session) (6 November 2006).

1236 Evert Rave, Ex. P01004, KT. 901 (21 March 2000). Kingori heard a group of men being loaded onto a bus cry out that they thought they were going to be killed. Joseph Kingori, Ex. P00950, PT. 19256-19257 (13 December 2007).

1237 PW-003, Ex. P01509, BT. 6090 (17 December 2003).

1238 Mile Janjić, Ex. P01096, BT. 9804–9805 (24 May 2004); Mile Janjić, Ex. P01094, PT. 17934 (20 November 2007); Janjić testified that while members of the special police did not return to Potočari on the empty buses, members of the MP did. Mile Janjić, Ex. P01096, BT. 9805 (24 May 2004). *See also* PW-003, Ex. P01509, BT. 6091 (17 December 2003).

1239 Evert Rave, Ex. P01004, KT. 901 (21 March 2000).

1240 PW-003, Ex. P01509, BT. 6086–6087 (17 December 2003) (testifying about 12 July 1995). PW-003 stated however that this was the only violence against the Bosnian Muslim men that he witnessed. PW-003, Ex. P01509, BT. 6087 (17 December 2003).

1241 PW-003, Ex. P01509, BT. 6091–6093 (17 December 2003) (testifying about escorting two buses on 13 July, PW-003 stated that these buses went in the direction of Bratunac but when arriving at an intersection, they did not turn west as did the buses of women, children and elderly (route shown in Ex. P01510, p. 1), but instead, went straight ahead).

1242 *See supra* para. 281.

1243 Robert Franken, Ex. P00598, PT. 2498 (16 October 2006). Franken believes this escort was either stopped at OP Papa and blocked by a tank or by men, or lost the convoy in Bratunac. *Ibid. See also* Johannes Rutten, Ex. P02638, KT. 2130–2131 (5 April 2000); PW-003 Ex. P01509, BT. 6088–6090 (17 December 2003); PW-003 Ex. P01509, BT. 6090 (17 December 2003).

1244 Johannes Rutten, Ex. P02638, KT. 2131 (5 April 2000); Evert Rave, Ex. P01004, KT. 901, 942 (21 March 2000).

1245 Evert Rave, Ex. P01004, KT. 933 (21 March 2000); Johannes Rutten, Ex. P02638, KT. 2131 (5 April 2000).

1246 PW-003, Ex. P01509, BT. 6093–6099 (17 December 2003); Ex. P01510. *See also* Johannes Rutten, Ex. P02638, KT. 2151 (5 April 2000).

291. By the early evening of 13 July 1995, all of the Bosnian Muslims—excluding the wounded and sick—had been transported out of Potočari.[1247] Clothing, shoes and bundles of personal belongings were left scattered on the compound and along the road.[1248] On the late evening of 13 July and the morning of 14 July, Bosnian Serb Forces set fire to these personal belongings as well as identification documents that the Bosnian Muslim men had been ordered to leave behind.[1249]

292. The Chamber was not convinced by the account of events given by Đuric and PW-052, in particular with respect to the separation of men and their detention in the White House. In contrast to the overwhelming evidence of other witnesses, discussed above, Đuric and PW-052 maintained that as far as they knew, there was no separation of men and they had no knowledge of any detention locations at the UN compound.[1250] The Chamber considers that their accounts were influenced by an attempt to minimise their involvement in the events, or that of the MUP, generally. The Chamber has therefore only relied on their testimony where it is corroborated by other witnesses it deemed more credible.

293. The Chamber finds that at least 1,000[1251] Bosnian Muslim men were separated, detained at the White House, and transported to Bratunac on 12 and on 13 July,[1252] where they were put up temporarily in buildings and buses.[1253] Many witnesses who were separated from their male relatives in Potočari never saw them alive again.[1254] The Chamber finds, further, that Bosnian Serb Forces operated in coordination when separating the Bosnian Muslim men, directing them to the White House, detaining them, and transporting them towards Bratunac. As found above, these forces included regular VRS soldiers, members of the MP of the Drina Corps and the Bratunac Brigade, the Main Staff's 65th Protection Regiment and 10th Sabotage Detachment, as well as members of special MUP police units such as the Jahorina Recruits.[1255] Senior VRS and MUP

1247 Evert Rave, Ex. P01004, KT. 915 (21 March 2000); Ex. P01485, pp. 13–14.

1248 Eelco Koster, Ex. P01483, PT. 3095 (26 October 2006). *See also* Mendeljev Đurić, Ex. P01620, PT. 10874 (2 May 2007). *See also* Tomasz Blaszczyk, T. 7651 (11 November 2010); Ex. P01349, 00:25:45–00:25:50.

1249 Johannes Rutten, Ex. P02638, KT. 2135–2136 (5 April 2000). Rutten identified a photograph that he had taken of the items on fire in front of the White House. Johannes Rutten, Ex. P02638, KT. 2136 (5 April 2000); Ex. P02642; Robert Franken, Ex. P00598, PT. 2512–2513 (16 October 2006); Ex. P00599; PW-002, Ex. P01497, KT. 1542 (29 March 2000). *See also* Adjudicated Facts 499, 510.

1250 Mendeljev Đurić, Ex. P01620, PT. 10816–10817 (2 May 2007); PW-052, Ex. P01598, PT. 8588, 8619 (9 March 2007).

1251 Mile Janjić, Ex. P01094, PT. 17941–17942, 17944–19745 (20 November 2007). *See supra* para. 288, n. 1230. The approximate estimate of 1,000 men is well within the total amount of men that were recorded as missing, last seen in Potočari on 12 and 13 July 1995. *See* Ex. P01776, pp. 15–18.

1252 *See supra* para. 289. *See* also Adjudicated Facts 508–509.

1253 *See infra* paras. 384–385.

1254 *See, e.g.,* PW-011, Ex. P01512 (confidential), PT. 3620–3622 (private session) (6 November 2006); PW-012, Ex. P01518, PT. 3312–3313 (31 October 2006); Hana Mehmedović. Ex. P01533 (17 June 2000), p. 5; Behara Krdzić, Ex. P02743 (16 June 2000), p. 2; Rahima Malkić, Ex. P01521 (17 June 2000), pp. 2–3; Šifa Hafizović, Ex. P01527 (16 June 2000), pp. 2–3; Mirsada Malagić, T. 10036–10037, 10041 (16 February 2011).

1255 *See supra* paras. 280, 289, 293.

officers were observed at the White House on several occasions throughout 12 and 13 July, including Mladić, Radoslav Janković, Popović, Krstić, and Momir Nikolić.[1256]

(e) Transportation of the Wounded

294. As the Bosnian Muslim population fled Srebrenica following the fall of the enclave on 11 July 1995, DutchBat transported the wounded Bosnian Muslims from the hospital in Srebrenica to the UN compound in Potočari.[1257] By the end of the day on 11 July, 35 severely wounded had been brought to the compound; DutchBat's medical supplies were low and despite assistance from MSF, they were not able to assist all of them.[1258] Testifying about the number of wounded individuals brought to the UN compound altogether, Franken stated there were "about 114".[1259]

295. The fate of the wounded was discussed at the Hotel Fontana meetings on the evening of 11 July.[1260] Mladić had stated that the VRS was willing to receive the wounded Bosnian Muslims in Bratunac[1261] where MSF had established an outpost to be able to accommodate them.[1262]

296. On 12 July, Nicolai called Lieutenant Colonel General Gvero, Assistant Commander for Morale Guidance, Religious, and Legal Affairs,[1263] to discuss the transportation of the wounded, suggesting that helicopters could be used for this purpose.[1264] Gvero told Nicolai that the use of helicopters was not an option due to the security risks this could pose, telling Nicolai that the transportation should take place by road.[1265]

297. In the afternoon of 13 July, Kingori and a MSF crew went back to Srebrenica to pick up some of the sick who had been left behind in the hospital.[1266] VRS soldiers told him that these

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1256 Joseph Kingori, Ex. P00950, PT. 19252 (13 December 2007); Evert Rave, Ex. P01004, KT. 899 (21 March 2000); Johannes Rutten, Ex. P02638, KT. 2150–2151 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4822–4824 (30 November 2006), PT. 5211–5212, 5223–5227 (7 December 2006); Ex. P02630; Ex. P02631 (photographs of Popović identified by Rutten as the man he saw present at the White House). *See also* PW-023, Ex. P00060, PT. 17314 (1 November 2007); Mile Janjić, Ex. P01096, BT. 9787 (24 May 2004); Adjudicated Facts 500, 506, 515.

1257 Robert Franken, Ex. P00598, PT. 2480 (16 October 2006); Pieter Boering, Ex. P01461, PT. 1931 (19 September 2006); Evert Rave, T. 6858–6859 (27 October 2010).

1258 *See* Ex. P00974 (UNMO SitRep dated 11 July 1995), p. 4 (reporting that there are 35 severely wounded present in the compound and "countless" lightly wounded people).

1259 Robert Franken, Ex. P00598, PT. 2551, 2610 (17 October 2006). The Chamber notes that a letter from Akashi to Annan on 12 July 1995 concerning the situation in Srebrenica assesses the number of wounded in the UN compound in Potočari to be 60–70. *See* Ex. P00608, p. 2. This letter is stamped with a time reference of 13:22 on 12 July.

1260 *See supra* paras. 246–249.

1261 *See supra* para. 249.

1262 *See* Ex. P00608, p. 2.

1263 *See supra* paras. 83, 85.

1264 Cornelis Nicolai, Ex. P00674, PT. 18495 (29 November 2007), PT. 18553–18554 (30 November 2007); Ex. P00693.

1265 Cornelis Nicolai, Ex. P00674, PT. 18495 (29 November 2007), PT. 18553–18555 (30 November 2007); Ex. P00693.

1266 Ex. P00992, p. 12; Joseph Kingori, Ex. P00950, PT. 19268 (14 December 2007). *See also* Ex. P00979.

people should be removed, or they would be killed.[1267] Kingori and MSF brought six remaining persons they found in the hospital and the psychiatric clinic to the UN compound in Potočari.[1268]

298. By the end of 13 July when the transportation of Bosnian Muslim women, children and elderly to Kladanj, and Bosnian Muslim men to Bratunac had been completed,[1269] a delegation of VRS officers, including Momir Nikolić and Colonel Aćamović, inspected the compound to ensure that there were no "Muslim soldiers" inside.[1270] Kingori testified that with the assistance of MSF a list of the wounded was compiled.[1271] By the evening of 13 July, 59 patients at the UN compound were transported to the hospital in Bratunac.[1272]

299. On 15 July, a meeting was held in Belgrade attended by, *inter alia,* SRSG Yasushi Akashi, Representative of the European Union at the UN International Committee for the former Yugoslavia Carl Bildt, Ambassador Thorvald Stoltenberg, Commander of the UNPROFOR Command in BiH, Rupert Smith, then President of Serbia Slobodan Milošević, and Mladić.[1273] The discussion points included, *inter alia,* the issue of access to the Srebrenica area by UNHCR and the ICRC, and UNPROFOR's evacuation of the wounded from Potočari and Bratunac.[1274] It was decided that Gvero was to meet with UNHCR on 16 July to further discuss the issues raised at this meeting.[1275]

300. Nicolai testified that an agreement was reached on 15 July for a MEDEVAC convoy to be sent to evacuate the remaining wounded in Potočari and the more seriously wounded that had been transferred to Bratunac hospital by this time.[1276] Nicolai testified, however, that this MEDEVAC

1267 Joseph Kingori, Ex. P00950, PT. 19269–19270 (14 December 2007).

1268 Ex. P00992, p. 12; Joseph Kingori, Ex. P00950, PT. 19269–19270 (14 December 2007). *See also* Ex. P00979.

1269 *See supra* para. 291.

1270 Joseph Kingori, Ex. P00950, PT. 19270–19271 (14 December 2007). Ex. P00992, pp. 12–13. *See also* Ex. P00978.

1271 Joseph Kingori, T. 5360, 5365–5366 (14 September 2010). *See* Ex. P01002. *See also* Ex. P00626.

1272 *See* Ex. P00979 (referring to 59 wounded waiting to be transported to Bratunac hospital); Ex, P00626 (referring to 57 wounded placed in Bratunac hospital). On 13 July 1995, Radoslav Janković sent a report from the Drina Corps IKM in Bratunac to the Command of the Drina Corps and the Security Department, that 18 more wounded were transferred to the hospital "later", of whom 5-6 were close to death. It states, further, that a "doctor from the UNPROFOR" stayed in the hospital in Bratunac at the request of hospital staff to make sure that the patients were properly treated, but that he, Radoslav Janković, intended to "send him away tomorrow, under the pretext that his help is not necessary." Ex. P00626. Butler testified that this statement of Radoslav Janković suggests that he did not want the Dutch or other international observers to be in a position to see and monitor what was happening to the wounded prisoners held there. Richard Butler, T. 16706 (14 July 2011).

1273 *See* Ex. P02097, p. 1; Ex. D00003, p. 1. *See also* Rupert Smith, T. 11533–11534 (21 March 2011); Rupert Smith, Ex. P02086, PT. 17525, 17530–17531 (6 November 2007). *See also* Ex. D00193 (14 August 1996), p. 17.

1274 *See* Ex. P02097, p. 2. *See also* Rupert Smith, Ex. P02086, PT. 17532–17533 (6 November 2007); Ex. D00193, p. 17.

1275 *See* Ex. P02097, p. 3. *See also* Rupert Smith, Ex. P02086, PT. 17533 (6 November 2007).

1276 Cornelis Nicolai, Ex. P00674, T. 18497–18498 (29 November 2007); Ex. P00686 (Notes of a telephone conversation between Nicolai and Marković on 16 July, referring to an agreement made the day before concerning a MEDEVAC convoy to evacuate the wounded to Tuzla).

convoy was shot at when it reached the border with Serbian territory, and was forced to return.[1277] On 16 July, Nicolai spoke to VRS Colonel Marković about the incident on the telephone, and requested that the convoy be let through as agreed, or that UNPROFOR would be informed when the convoy could continue.[1278] Marković told Nicolai that Gvero was meeting with UNHCR authorities about the matter, and that Nicolai should contact them about it again only after an agreement had been reached.[1279]

301. In order to further discuss the evacuation of the wounded intended to be evacuated by the MEDEVAC convoy which had been shot at and forced to return, a meeting was held at the UN compound in Potočari the following day, 17 July, attended by a delegation of DutchBat officers, including Franken, members of UNMO, a delegation of the VRS, including Radoslav Janković, Keserović,[1280] and Momir Nikolić, as well as a number of Serb civilian officials, including the Civil Affairs Commissioner in Srebrenica Miroslav Deronjić.[1281] It was decided that the wounded would be handed over to the ICRC, which would be carrying out the evacuation.[1282] Before this handover could take place, however, Momir Nikolić insisted on inspecting the wounded to determine whether there were any ABiH soldiers among them.[1283] This was done in the presence of the ICRC and a DutchBat security squad.[1284] An ICRC Press communiqué issued on 18 July refers to the evacuation of a total of 88 "wounded people" from Bratunac and Potočari to Tuzla in an operation that took place on 17 and 18 July.[1285] The Press release records, further, that 23 wounded Bosnian Muslim men were refused authorisation to leave as they were considered to be POWs.[1286]

1277 Cornelis Nicolai, Ex. P00674, T. 18497–18498 (29 November 2007); Ex. P00686.
1278 *See* Ex. P00686.
1279 Cornelis Nicolai, Ex. P00674, T. 18498–18499 (29 November 2007); Ex. P00686.
1280 As discussed in further detail elsewhere in the Judgement, earlier that day, Keserović had conveyed to Radoslav Janković the Accused's instruction that Janković was to keep an eye on the evacuation of the wounded by the ICRC from the Health Center in Bratunac. *See also* Dragomir Keserović, T. 13957, 13976–13977 (11 May 2011); Dragomir Keserović, T. 14148–14149 (16 May 2011).
1281 Robert Franken, Ex. P00598, PT. 2514–2516 (16 October 2006); Robert Franken, T. 3361 (30 June 2010); Dragomir Keserović, T. 13976–13977 (11 May 2011). *See also* Ex. P00982 (UNMO SitRep report dated 17 July 1995), p. 1. *See also* Adjudicated Fact 483.
1282 Robert Franken, Ex. P00598, PT. 2515–2516 (16 October 2006). *See also* Ex. P00982 (UNMO SitRep report dated 17 July 1995), p. 1; Momir Nikolić, T. 12646 (12 April 2011). *See also* Dragomir Keserović, T. 13981 (11 May 2011).
1283 Robert Franken, Ex. P00598, PT. 2516 (16 October 2006); Robert Franken, T. 3361 (30 June 2010); Ex. P00992, p. 14. *See also* Ex. P00982, p. 1.
1284 Robert Franken, Ex. P00598, PT. 2516 (16 October 2006); Robert Franken, T. 3361 (30 June 2010). *See also* Ex. P00982, p. 1.
1285 Ex. P02223 (stating that the operation was in agreement with General Milan Gvero). The Chamber notes that Keserović and Radoslav Janković remained at the Bratunac Health Centre until the ICRC had completed the evacuation. Dragomir Keserović, T. 13979 (11 May 2011).
1286 Ex. P02223. *See also* Ex. P02168.

(f) Statement Presented by Radoslav Janković Concerning the Transportation Process

302. Immediately after Momir Nikolić had left the meeting at the UN compound on 17 July to inspect the wounded,[1287] Radoslav Janković presented a declaration to those that were still present intended to record the agreement reached at the Hotel Fontana meeting on 12 July 1995 concerning the transport of the Bosnian Muslim population from Potočari.[1288] This declaration had been drafted by Miroslav Deronjić on 16 July,[1289] but formulated as having been drafted by Bosnian Muslim civilian authorities.[1290] Janković asked that Nesib Mandžić—who had taken part in the second and third Hotel Fontana meetings—appear in order to sign it.[1291] Franken, who was also requested to sign it, testified that his signature was supposed to serve as proof that Mandžić had not been forced to sign the declaration.[1292] The declaration was signed by Franken, Mandžić and Deronjić.[1293] It records, *inter alia,* that "depending on the wish of each individual", the Bosnian Muslim population was free to stay in the enclave or to move out, that those who chose to move out could choose where they wanted to go, and that the "evacuation" had been conducted "absolutely correctly by the Serbian side".[1294] It records that the population had allegedly decided to move out of the enclave and be "evacuated" to Kladanj.[1295] According to this declaration, the VRS has complied with the agreements made at Hotel Fontana and with "all the regulations of the Geneva Conventions and the International Law of War".[1296] Franken testified that this text was "nonsense"; he understood his signing of the declaration as a condition that the wounded would be allowed to be evacuated properly.[1297] Following the phrase in the text of the declaration referring to the fact that the transport of the population was carried out in accordance with the Geneva Conventions, Franken added, in handwriting, "as far as the convoys escorted by UN forces was concerned."[1298] Franken moreover challenged the declared possibility of the Bosnian Muslim population to stay in the enclave since they did not have a "realistic opportunity to stay".[1299]

1287 Robert Franken, T. 3361 (30 June 2010).
1288 Robert Franken, Ex. P00598, PT. 2516 (16 October 2006); Robert Franken, T. 3363 (30 June 2010). Franken stated that Janković was waving a document which was "in the Croatian language". Franken had his own interpreters translate the document into English. Robert Franken, Ex. P00598, PT. 2516 (16 October 2006); Ex. P000628. *See also* Miroslav Deronjić, Ex. P00020a, BT. 6205 (19 January 2004).
1289 Miroslav Deronjić, Ex. P00020a, BT. 6225, 6227 (20 January 2004).
1290 *See* Ex. P00028.
1291 Robert Franken, Ex. P00598, PT. 2516 (16 October 2006).
1292 Robert Franken, Ex. P00598, PT. 2516 (16 October 2006).
1293 *See* Ex. P00028, p. 2.
1294 Ex. P00028, p. 1.
1295 Ex. P00028, p. 1.
1296 Ex. P00028, pp. 1–2. *See also* Robert Franken, Ex. P00598, PT. 2516 (16 October 2006).
1297 Robert Franken, T. 3364 (30 June 2010).
1298 Robert Franken, T. 3364 (30 June 2010); Ex. P00028, p. 2. S*ee also* Ex. P00628 (DutchBat's field translation of Ex. P00028 with Franken's addition in handwriting).
1299 Robert Franken, Ex. P00598, PT. 2517 (16 October 2006).

303. Deronjić testified that he drafted the declaration with the intention of "confirmation of what was my responsibility, namely the transport of the civilians".[1300] He conceded, however, that at the time he drafted it, he was aware that Bosnian Muslim men had been separated in Potočari, as well as being aware of killings that had taken place at a school, by the Konjević Polje road and at Kravica; he did not, however, believe it was necessary to include this in the declaration.[1301] While he stood by the fact that the Bosnian Muslim population was "to a large extent" transported towards Kladanj in a "correct manner",[1302] he opined that the circumstances on the ground after the fall of Srebrenica following the VRS takeover were such that the population did not in fact have a possibility of remaining in the enclave.[1303] The question of whether the transportation of the Bosnian Muslim population from Potočari qualifies as a crime alleged in the Indictment will be dealt with in more detail elsewhere in the Judgement.[1304]

(g) Conclusion

304. By the evening of 13 July 1995, the approximately 25,000–30,000 Bosnian Muslims who had sought refuge in Potočari following the fall of Srebrenica—save for the wounded—had been transported away from the UN compound in an operation organised by the VRS leadership, with assistance from the MUP.[1305] Various VRS and MUP units present in Potočari took part in this transportation operation. Momir Nikolić coordinated and supervised this process, including the separation and detention of the Bosnian Muslim men.[1306] The operation was conducted in the presence of senior VRS officials including Mladić, Popović, Krstić, Kosorić and Radoslav Janković, and MUP commander Borovčanin.[1307]

5. Killings (13–14 July)

(a) Bodies of Nine Bosnian Muslim Men Found Near the UN Compound[1308]

305. On 13 July 1995, Rutten, Koster and DutchBat Sergeant Major Van Schaik investigated a rumour from Bosnian Muslims in Potočari that eight or nine bodies had been seen near the UN

1300 Miroslav Deronjić, Ex. P00020a, BT. 6219 (20 January 2004).
1301 Miroslav Deronjić, Ex. P00020a, BT. 6219, 6225–6227 (20 January 2004).
1302 Miroslav Deronjić, Ex. P00020a, BT. 6206 (19 January 2004).
1303 Miroslav Deronjić, Ex. P00020a, BT. 6217–6219 (20 January 2004). He added that it would have been impossible to provide for the security of Bosnian Muslims who decided to stay in the enclave. Miroslav Deronjić, Ex. P00020a, BT. 6220 (20 January 2004).
1304 *See infra* Chapter VII. F.
1305 *See supra* paras. 275, 291.
1306 *See supra* para. 275.
1307 *See supra* paras. 275, 280, 293.
1308 The Indictment alleges that on 13 July the bodies of nine Bosnian Muslim men who had been shot were found in the woods near the UN compound in Potočari on the Budak side of the main road. Indictment, para. 22.1(a).

compound.[1309] They located nine bodies in a field near a stream in the Budak Hill area about 500 metres from the compound.[1310] When asked to identify where they had found the bodies, both Rutten and Koster marked the same location on aerial photographs of Potočari.[1311] Rutten took photographs of the bodies, but the film was not successfully developed.[1312] Van Schaik collected some identification documents,[1313] but he threw them away on Rutten's orders when they came under fire from Bosnian Serb Forces.[1314] Rutten informed the DutchBat Command of the discovery of the bodies.[1315] Rutten testified that no further investigation could be conducted because of restrictions on the movement of DutchBat.[1316]

306. Another DutchBat soldier, PW-002, testified that after he heard a similar rumour, he also found nine bodies near the UN compound and, when asked to identify on aerial photographs where he had found them, he marked the same location as Rutten and Koster.[1317] PW-002 testified that he saw the bodies on 12 July.[1318] However, he also testified that he found them on the second day that the Bosnian Muslims were transported out of Potočari,[1319] which has been found to be 13 July.[1320]

1309 Johannes Rutten, Ex. P02638, KT. 2138 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4906–4907 (30 November 2006), PT. 4965 (4 December 2006); Eelco Koster, Ex. P01483, PT. 3026 (25 October 2006); Ex. P01485, p. 14.

1310 Johannes Rutten, T. 17825 (12 September 2011); Johannes Rutten, Ex. P02638, KT. 2139–2140 (5 April 2000); Eelco Koster, Ex. P01483, PT. 3076–3077 (26 October 2006); Ex. P01485, p. 14.

1311 Johannes Rutten, T. 17825–17827 (12 September 2011); Ex. D00321 (aerial photograph on which Rutten indicated where he saw the nine bodies); Eelco Koster, Ex. P01483, PT. 3027–3029 (25 October 2006), PT. 3074–3075 (26 October 2006); Ex. P01486 (aerial photograph on which Koster marked the location of the nine bodies); Ex. P01490 (aerial photograph on which Koster marked the route he took to the nine bodies). *See also* Robert Franken, Ex. P00598, PT. 2505–2509 (16 October 2006), PT. 2572 (17 October 2006); Ex. P00616 (aerial photograph on which Franken marked the approximate area in which Koster reported that the nine bodies had been located).

1312 Johannes Rutten, T. 17818 (12 September 2011); Johannes Rutten, Ex. P02629, PT. 4981–4982 (4 December 2006); Johannes Rutten, Ex. P02638, KT. 2140, 2148 (5 April 2000); Eelco Koster, Ex. P01483, PT. 3032–3033, 3082 (26 October 2006).

1313 Johannes Rutten, Ex. P02629, PT. 4916–4917 (4 December 2006); Eelco Koster, Ex. P01483, PT. 3033, 3080–3082 (26 October 2006).

1314 Johannes Rutten, Ex. P02638, KT. 2140–2141 (5 April 2000); Johannes Rutten, Ex. P02629, PT. 4917 (4 December 2006); Johannes Rutten, T. 17812, 17817 (12 September 2011); Eelco Koster, Ex. P01483, PT. 3033 (26 October 2006).

1315 Johannes Rutten, Ex. P02629, PT. 4965–4966 (4 December 2006). *See also* Robert Franken, Ex. P00598, PT. 2505–2509 (16 October 2006); Ex. P00616; Evert Rave, Ex. P01004, KT. 908–909 (21 March 2000).

1316 Johannes Rutten, Ex. P02629, PT. 4879 (30 November 2006). *See also* Robert Franken, Ex. P00598, PT. 2653 (18 October 2006).

1317 PW-002, Ex. P01497, KT. 1528 (28 March 2000); Ex. P01499 (aerial photograph on which PW-002 marked where he photographed the bodies); PW-002, Ex. P01493, PT. 3173–3174 (27 October 2006); Ex. P01496 (aerial photograph on which PW-002 marked the location of the nine bodies). In addition, PW-002's testimony as to the gender of the nine, their clothes and the nature of their wounds resembles that of Rutten and Koster on the same matters. Johannes Rutten, Ex. P02638, KT. 2140 (5 April 2000); PW-002, Ex. P01497, KT. 1539 (29 March 2000); PW-002, Ex. P01493, PT. 3147 (27 October 2006); Eelco Koster, Ex. P01483, PT. 3027 (25 October 2006); Ex. P01485, p. 14. PW-002 took three photographs of the bodies, but their quality is poor. PW-002, Ex. P01497, KT. 1531–1536 (28 March 2000); Ex. P01500 (photograph of one body); Ex. P01501 (photograph of three bodies); Ex. P01502 (photograph of two bodies).

1318 PW-002, Ex. P01492 (confidential), PT. 3150 (private session) (27 October 2006); PW-002, Ex. P01493, PT. 3157 (27 October 2006).

1319 PW-002, Ex. P01497, KT. 1528–1530, 1532–1533 (28 March 2000); PW-002, Ex. P01493, PT. 3157 (27 October 2006). After his return to the UN compound, PW-002 did not make a report about the bodies, but a

The Chamber finds that notwithstanding the confusion over the dates PW-002 saw the same nine bodies as Rutten and Koster.

307. The bodies were of males dressed in civilian clothes.[1321] They had gun shot wounds to the back.[1322] The wounds appeared to have been recently inflicted.[1323] Koster and Rutten believed that they had been shot where they had been found.[1324] According to PW-002, some of the victims had blood stains on the backs of their heads as well as on their backs.[1325] Evidence has been adduced of exhumations of two small graves in Potočari containing altogether 11 Srebrenica victims,[1326] but it does not establish that they were at a location in Potočari that is at or near to where the nine bodies were found.[1327]

308. While evidence establishes that the bodies found were all males in civilian clothes with gun shot wounds to the back, there is little to nothing known about the circumstances of their deaths. As a result, the Majority,[1328] Judge Flügge dissenting,[1329] is of the view that there is not sufficient reliable evidence before the Chamber to link the killing of the nine men in Potočari beyond reasonable doubt to the Bosnian Serb Forces.

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colleague who had been with him made an official report about it by speaking to the DutchBat Commander. PW-002, Ex. P01492 (confidential), PT. 3151–3152 (private session) (27 October 2006).

1320 *See supra* paras. 283, 291.

1321 Johannes Rutten, Ex. P02638, KT. 2140 (5 April 2000); PW-002, Ex. P01497, KT. 1539 (29 March 2000); Eelco Koster, Ex. P01483, PT. 3026 (25 October 2006). According to Rutten, the people who had been shot were about 45 to 55 years old, whereas PW-002 testified that they were between the ages of approximately 15 and 45. Johannes Rutten, Ex. P02638, KT. 2140 (5 April 2000); PW-002, Ex. P01497, KT. 1539 (29 March 2000).

1322 Johannes Rutten, Ex. P02638, KT. 2140 (5 April 2000); Eelco Koster, Ex. P01483, PT. 3027 (25 October 2006); Ex. P01485, p. 14; PW-002, Ex. P01493, PT. 3147 (27 October 2006). Koster testified that all the wounds were in the middle part of the back and that it appeared that they had all been inflicted at the same height. Eelco Koster, Ex. P01483, PT. 3027 (25 October 2006).

1323 Eelco Koster, Ex. P01483, PT. 3027 (25 October 2006); Johannes Rutten, Ex. P02638, KT. 2140 (5 April 2000).

1324 Eelco Koster, Ex. P01483, PT. 3027 (25 October 2006) (testifying that it appeared that the Bosnian Muslims had been lined up and standing side by side when they were shot); Johannes Rutten, Ex. P02629, PT. 4812 (29 November 2006) (testifying that there was no evidence that the bodies had been moved, but that they had been shot on the spot).

1325 PW-002, Ex. P01497, KT. 1539 (29 March 2000).

1326 Dušan Janc, T. 1817–1819, 1857 (14 May 2010); Ex. P00200; Ex. P00201; Ex. P00202; Ex..P00170, p. 33.

1327 An exhumation report by the Bosnian authorities on one of the two graves describes it as being in a field in Potočari owned by Osmo Šahinović and gives coordinates for it, but there is no evidence that this is in the vicinity of the location in Potočari at which the nine bodies were found. Ex. P00201, p. 1.

1328 Judge Mindua and Judge Nyambe have appended separate concurring opinions to the Judgement.

1329 Judge Flügge dissents and finds that the only reasonably inference to draw from the evidence is that Bosnian Serb Forces killed these nine men. No soldiers of the ABiH or armed civilians of any kind were present at or around this location at the relevant time. The location where the bodies were found was controlled by VRS forces who had entered Potočari on the morning of 12 July and disarmed members of DutchBat. Further, Rutten and Koster, whose testimony Judge Flügge considers entirely reliable and credible, testified that they were threatened by Bosnian Serb soldiers when they saw them at the location where the bodies were found. This clearly demonstrates that they had a reason to conceal the deaths of these nine civilian Bosnian Muslim men. Moreover, the fact that neither Rutten nor Koster investigated this incident does not lead Judge Flügge to a different finding, as it was not the mandate of UNPROFOR to act as an investigative body.

(b) One Bosnian Muslim Man[1330]

309. Sometime on 13 July DutchBat soldier Paul Groenewegen[1331] saw a group of VRS soldiers take an unarmed Bosnian Muslim man who was offering resistance, place him with his face towards the wall of a house, and then shoot him in the head from a distance of about three metres.[1332] The man was wearing civilian clothes.[1333] Immediately after he was shot, he collapsed.[1334] At the time Groenewegen was standing about 30 metres from where the man was shot.[1335] He reported what he saw the next morning.[1336] The Chamber concludes that in the incident observed by Groenewegen VRS soldiers killed a Bosnian Muslim man.

(c) Luke School near Tišća[1337]

310. On 13 July 1995, PW-017, a Bosnian Muslim man, managed to board one of the buses at the UN compound in Potočari together with his family.[1338] The bus PW-017 boarded headed in the direction of Bratunac, continuing towards Vlasenica through the villages of Glogova, Kravica,

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1330 The Indictment alleges that on 13 July one Bosnian Muslim man was taken behind a building near the White House and summarily executed. Indictment, para. 22.1.b.

1331 Paul Groenewegen, Ex. P00098, BT. 1014–1015 (10 July 2003). Groenewegen was a private in Charlie Company of DutchBat. *Ibid.*

1332 Paul Groenewegen, Ex. P00098, BT. 1032–1035, 1044 (10 July 2003). In this case, Groenewegen clarified that when he referred to "Serb soldiers" in the *Blagojević and Jokić* case, he meant "the people who came from outside the enclave, and there was no unity in the uniform, they had many camouflage-type uniforms", and that the DutchBat often referred to them as the "BSA", which represented the "Bosnian Serb Army". Paul Groenewegen, T. 1169–1170 (15 April 2010). On this basis, the Chamber finds that they were VRS soldiers.

1333 Paul Groenewegen, Ex. P00098, BT. 1034 (10 July 2003).

1334 Paul Groenewegen, Ex. P00098, BT. 1035 (10 July 2003).

1335 Paul Groenewegen, Ex. P00098, BT. 1035 (10 July 2003); Paul Groenewegen, T. 1173–1174 (15 April 2010); Ex. P00099 (an aerial photograph of Potočari on which Groenewegen marked the location at which he saw the man being shot).

1336 Paul Groenewegen, Ex. P00098, BT. 1036 (10 July 2003); Paul Groenewegen, T. 1204 (15 April 2010). Franken said that a report came through the Commander of Charlie Company that one of his soldiers had seen two VRS soldiers shoot a Bosnian Muslim. Robert Franken, Ex. P00598, PT. 2506 (16 October 2006), PT. 2573, 2589, 2620 (17 October 2006); Robert Franken, T. 3360 (30 June 2010). Franken testified that he had heard that this execution had taken place east of the bus station. Robert Franken, Ex. P00598, PT. 2506 (16 October 2006), PT. 2621–2622 (17 October 2006); Ex. P00616 (aerial photograph on which Franken marked the location). Even though Franken's testimony as to the location of the incident is at variance with that of Groenewegen's, there is a broad similarity between the two accounts and the Chamber finds that both witnesses are referring to the same incident.

1337 The Indictment alleges that throughout the day on 13 July 1995, VRS soldiers from the Vlasenica Brigade of the Drina Corps identified and separated some remaining Bosnian Muslim men and boys and some of the Bosnian Muslim women who had arrived in the Luke area in a convoy from Potočari. It is alleged that this group was forced to walk to the nearby Luke school, where they were abused and assaulted, and that on or about the evening of 13 July and the day of 14 July 1995, VRS and/or MUP soldiers loaded 25 Bosnian Muslim men from the Luke School onto a truck, drove them to an isolated pasture nearby, and summarily executed them with automatic weapons. *See* Indictment, para. 21.5.

1338 PW-017, Ex. P02883, KT. 1255–1258 (24 March 2000). The Chamber recalls from a previous section its finding that the first convoy of buses leaving Potočari, while carrying mostly women, children and elderly, also contained some men. The Majority also recalls Momir Nikolić's evidence, which it accepts, that some of the men were allowed to board the buses because the process was being filmed and was therefore allowed for propaganda purposes. Momir Nikolić testified that these men were later removed from the buses at various locations en route towards Kladanj, including at Tišća. *See supra* n. 1163.

Konjević Polje, Nova Kasaba, Milići, Tišća, and Luke, the last stop.[1339] PW-017 hid behind the women and children whenever VRS soldiers entered the bus en route to check for men.[1340] Upon arrival in Luke, the driver told the Bosnian Muslims that they had to get off the bus and continue on foot[1341] towards Kladanj.[1342]

311. PW-017 started walking, but was stopped by a VRS soldier who directed him to the nearby Luke School.[1343] The evidence of several other witnesses corroborates the fact that men were separated at this location.[1344] Upon arrival at the school at around 10:00 a.m. that morning, PW-017's hands were tied and he sat down in a meadow in front of the school building, where approximately 21 other Bosnian Muslim men, aged between about 20 and 60 years, were brought in the course of the day.[1345]

312. While sitting on the meadow, PW-017 witnessed that one VRS soldier, referred to as "Željko" was transmitting and receiving orders on a field telephone hanging by the staircase leading to the Luke School.[1346] The Bosnian Muslim men gathered in the meadow in front of the school were searched by VRS soldiers who seized their valuables and, after the night fell, brought to a

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1339 PW-017, Ex. P02883, KT. 1258–1259 (24 March 2000); PW-017, T. 672 (18 March 2010); Ex. P00054 (PW-017 marked the route his bus took on this map).

1340 PW-017, Ex. P02883, KT. 1257–1258, 1260 (24 March 2000).

1341 PW-017, Ex. P02883, KT. 1259, 1260–1261 (24 March 2000).

1342 PW-017, Ex. P02883, KT. 1259, 1260–1261 (24 March 2000). PW-017 testified that the driver told them they had to proceed on foot because their "folk are nearby and [they] will reach them in no time". PW-017, Ex. P02883, KT. 1261 (24 March 2000). As found elsewhere in this Judgement, convoys of buses carrying mainly women, children and elderly headed towards the Luke area on 12 and 13 July, where they were deboarded and from where many of them had to walk the final stretch to ABiH-held territory in Kladanj. *See supra* para. 282.

1343 PW-017, Ex. P02883, KT. 1261–1263 (24 March 2000); PW-017, T. 673–675 (18 March 2010); Ex. P00055 (showing the road in front of Luke School and the area behind Luke School). *See also* Jean-René Ruez, T. 921–922 (29 March 2010); Ex. P00094, pp. 24–26. *See also* Adjudicated Facts 247, 248. PW-017 testified that the soldier who directed him to the school was ordered to do so by a "Major". PW-017, Ex. P02883, KT. 1261–1263 (24 March 2000); PW-017, T. 673 (18 March 2010). The Chamber finds that the "Major" referred to by PW-017 is Major Sarkić, described by Boering as the "liaison officer" for the Milići Brigade, who was there on the order of the Drina Corps. Pieter Boering, Ex. P01461, PT. 2022–2023 (22 September 2006). *See also* Adjudicated Facts 252, 253.

1344 Pieter Boering, Ex. P01461, PT. 2022–2023 (22 September 2006); Momir Nikolić, T. 12393 (6 April 2011); Erin Gallagher, T. 6694 (21 October 2010). Boering, similarly, observed the separation of some 10–15 men by a group of VRS soldiers at Tišća, who were taken into the direction of a forest at the order of Major Sarkić. Pieter Boering, Ex. P01461, PT. 2022–2023 (22 September 2006). *See also* Adjudicated Facts 243, 244.

1345 PW-017, Ex. P02883, KT. 1268–1269 (24 March 2000). PW-017 identified the "wider area of the school". PW-017, T. 675–676 (18 March 2010); Ex. P00056.

1346 PW-017, Ex. P02883, KT. 1270 (24 March 2000) (PW-017 heard "Željko" saying "Yes, Sir. Yes, I'll do that. I will tell them that. Everything is okay."); PW-017, T. 675 (18 March 2010); Ex. P00056. *See also* Adjudicated Fact 249. PW-017 witnessed several other VRS soldiers while sitting on the meadow. One of the soldiers introduced himself as "Stanimir" from Vlasenica. PW-017 also recognized a soldier whose name he later confirmed was Savo Ristanović. PW-017, Ex. P02883, KT. 1271–1275 (24 March 2000). Stanimir asked PW-017 whether he knew a soldier called Spomenko Garić; PW-017 confirmed he knew this individual having worked with him at the bauxite mine. PW-017, Ex. P02883, KT. 1274 (24 March 2000). Stanimir told PW-017 that Garić was commander of a "Special Intervention Unit" of the army, that he had been "very successful in his sabotage actions" that he was in Kravica where he "had a mission to do" but that he, Garić, would arrive at the Luke school later than evening. PW-017, Ex. P02883, KT. 1276–1277 (24 March 2000). PW-017 testified that Garić did in fact arrive later that evening and he and PW-017 spoke to each other shortly before Garić left again. He did not notice

classroom of the Luke School.[1347] Later that evening, a group of about ten individuals wearing overalls and bandanas, different from the forces PW-017 had seen throughout the day, arrived at the school.[1348] PW-017 heard the soldier who was guarding the classroom speaking to some of these individuals, asking them how they "fared" in Kravica.[1349] PW-017 heard the other VRS soldiers answering that they had "finished with the balijas".[1350] This group of VRS soldiers then entered the classroom and started interrogating the Bosnian Muslim men, asking how many "Serbs" they had killed, and where "Naser" was.[1351] While asking these questions, the detainees were beaten on their heads with rifles and a metal rod that one elderly Bosnian Muslim man used as a walking stick.[1352] PW-017 was hit in the face—an injury of which he still bears the scars[1353]—as well as being kicked in the chest.[1354] The beatings lasted around half an hour and most men were covered in blood.[1355] After the beating, this group of soldiers left.[1356]

313. Around midnight, the 22 Bosnian Muslim men were ordered by the soldiers who had been present at the school during the day to board a military truck.[1357] Their hands remained tied behind their backs.[1358] The truck drove towards Vlasenica, but turned onto a macadam road before reaching the town.[1359] When the truck reached a brook one of the soldiers knocked on the roof of the cabin telling the driver "[n]ot here. Take them up there, where they took people before."[1360] The truck drove on towards an overgrown meadow in Rašića Gaj; the soldiers accompanying the truck got off, opened the front part of the truck and immediately started shooting at the Bosnian Muslim men.[1361] Some men who had been badly beaten at the school and were lying on the floor of the

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any insignia on Garić as it was dark and there were no lights in the classroom. PW-017, Ex. P02883, KT. 1283–1284 (24 March 2000).

1347 PW-017, Ex. P02883, KT. 1280–1282 (24 March 2000).

1348 PW-017, Ex. P02883, KT. 1283, 1285, 1287–1288 (24 March 2000). PW-017 believed that this group belonged to the group of soldiers who came back from Kravica on the ground that they wore the same uniform—overall uniforms and bandanas—as Spomenko Garić who he knew and had shortly spoken to. PW-017 stated, further, that the bandanas were of different colours and some were tied in the back "such as their special units, rather, sabotage units wore it." PW-017, Ex. P02883, KT. 1287–1288 (24 March 2000).

1349 PW-017, Ex. P02883, KT. 1285 (24 March 2000).

1350 PW-017, Ex. P02883, KT. 1285 (24 March 2000).

1351 PW-017, Ex. P02883, KT. 1285 (24 March 2000).

1352 PW-017, Ex. P02883, KT. 1285–1286 (24 March 2000).

1353 PW-017, T. 677 (18 March 2010); Ex. P00057 (confidential). PW-017 testified that one of the soldiers was carrying a flag which had been taken from the mosque; the soldiers asked the Bosnian Muslim men what the flag was and when PW-017 answered the soldier, he was hit above his eye with the metal rod. PW-017, P02883, KT. 1286 (24 March 2000).

1354 PW-017, Ex. P02883, KT. 1285 (24 March 2000).

1355 PW-017, Ex. P02883, KT. 1287 (24 March 2000).

1356 PW-017, Ex. P02883, KT. 1288 (24 March 2000).

1357 PW-017, Ex. P02883, KT. 1289–1291 (24 March 2000); PW-017, T. 676 (18 March 2010). *See also* Adjudicated Fact 250.

1358 PW-017, Ex. P02883, KT. 1293 (24 March 2000).

1359 PW-017, Ex. P02883, KT. 1292–1293 (24 March 2000).

1360 PW-017, Ex. P02883, KT. 1293–1294 (24 March 2000).

1361 PW-017, Ex. P02883, KT. 1295–1296 (24 March 2000). *See also* Adjudicated Fact 250. PW-017 remembered several men on the truck with him who were killed at Rašića Gaj. He identified two men by their first and family

truck were pulled off and shot with a short burst of gunfire.[1362] Two men tried to escape and were shot while they ran away from the truck.[1363] PW-017 jumped off the truck on the other side of where the soldiers were standing.[1364] He heard one of the VRS soldiers saying "[l]ook at this balija motherfucker. He's fleeing, he's escaping", whereupon they immediately opened gunfire in his direction.[1365] PW-017 could hear bullets hitting the shrubbery around him and stayed close to the ground.[1366] He found his way into the nearby forest, all the while hearing shots fired in his direction.[1367] PW-017 rolled down a slope and hid behind a rock until dawn.[1368] After this, he wandered around for approximately a week before meeting some other men in a similar situation; on 27 July 1995, he and these men eventually made it to ABiH-controlled territory.[1369]

314. On the basis of the above, the Chamber finds that on 13 July 1995, approximately 22 Bosnian Muslim men were interrogated and beaten by VRS soldiers while detained at the Luke School. At night, these men were loaded onto a truck, driven to a meadow in Rašića Gaj near Vlasenica, and killed by VRS soldiers in the early hours of 14 July 1995.

C. Bratunac Area (12–14 July)

1. Military Action against the Column and Developments Related to the Column (12 and 13 July)

315. On 12 July during the morning the column that set off from Šušnjari[1370] was shelled in the area of Buljim.[1371] In the evening there was a major ambush at Kamenica,[1372] in which large numbers of people were killed[1373] or became separated from the column.[1374]

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name, namely Azem Bocić from Kutjevac and Abdul Kadir, PW-017, Ex. P02883, KT. 1301–1302 (24 March 2000).

1362 PW-017, Ex. P02883, KT. 1296 (24 March 2000).

1363 PW-017, Ex. P02883, KT. 1296 (24 March 2000).

1364 PW-017, Ex. P02883, KT. 1297 (24 March 2000).

1365 PW-017, Ex. P02883, KT. 1297 (24 March 2000).

1366 PW-017, Ex. P02883, KT. 1297 (24 March 2000).

1367 PW-017, Ex. P02883, KT. 1297–1298 (24 March 2000).

1368 PW-017, Ex. P02883, KT. 1298 (24 March 2000).

1369 PW-017, Ex. P02883, KT. 1299–1301 (24 March 2000).

1370 *See supra* paras. 237–240.

1371 PW-015, T. 1376 (26 April 2010); PW-005, Ex. P00261, PT. 7083, 7136 (8 February 2007); PW-005, T. 2221–2225 (31 May 2010); PW-004, Ex. P00442, KT. 3243 (23 May 2000); PW-014, Ex. P02617, PT. 3512 (2 November 2006).

1372 Jean-René Ruez, T. 963–966 (29 March 2010); Ex. P00081; Ex. P00085; Mevludin Orić, T. 810 (22 March 2010); PW-015, Ex. P00110, KT. 2946, 3004 (14 April 2000); PW-005, Ex. P00261, PT. 7083 (8 February 2007); PW-005, T. 2235, 2237 (31 May 2010); PW-018, T. 10845 (7 March 2011); PW-004, Ex. P00442, KT. 3242–3243 (23 May 2000); Osman Salkić, T. 7868 (22 November 2010); Osman Salkić, Ex. P01373 (4 December 2004), p. 4.

1373 Mevludin Orić, Ex. P00069, PT. 877, 906–907 (28 August 2006) (testifying that he believed that over a hundred people were killed and many were injured); PW-005, Ex. P00261, PT. 7083–7084, 7136 (8 February 2007) (testifying that more people were killed at Kamenica than at Buljim and that the dead and wounded could not be counted but were "lying there like logs"); Osman Salkić, Ex. P01373 (4 December 2004), p. 4 (testifying that he could see about 15 or 20 men killed in the course of the ambush). *See also* PW-015, T. 1376, 1403 (26 April 2010); PW-018, T. 10845 (7 March 2011); PW-005, T. 2239 (31 May 2010).

316. There is evidence that at around 3:00 a.m. or even earlier on 12 July RS radio eavesdropping groups had received information that there were "significant enemy forces" moving and that shortly afterwards the Bosnian Serb Forces realised that parts of the 28th Division of the ABiH were attempting a breakthrough from the Srebrenica enclave.[1375] From early in the day intelligence on the movement of the column was being passed on within the Bosnian Serb Forces.[1376] As a consequence the 2nd Šekovići Detachment of the RS Special Police Brigade,[1377] the 1st Company of the Zvornik PJP,[1378] and the Jahorina Recruits[1379] were deployed to secure the Konjević Polje–Bratunac road against the advance of the Bosnian Muslims.[1380] There was also a VRS presence there that day.[1381] By the evening of 12 July, these members of the Bosnian Serb Forces were supported by a Praga, which is an anti-aircraft gun, and a BOV, which has an anti-aircraft gun mounted on it.[1382]

317. At around 9:00 p.m. on 12 July 1995,[1383] a meeting was held at the Bratunac Brigade Headquarters, at which initially, amongst others, Pandurević, Krstić, and Trivić were present;[1384] an

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1374 Mevludin Orić, Ex. P00069, PT. 877, 880, 906–907 (28 August 2006) (testifying that after the attack at Kamenica many fled towards Siljkovići and Kravica, where they were captured by the Bosnian Serb Forces); Ex. P00073 (map on which Orić identifies Šušnjari, Siljkovići, Kravica, Sandići, and Kamenica); PW-015, T. 1403 (26 April 2010) (testifying that as a result of the ambush at Kameničko Brdo the column broke up into smaller groups); Osman Salkić, T. 7868 (22 November 2010) (testifying that after the ambush at Kamenica the column was bisected). *See also* PW-005, Ex. P00261, PT. 7083–7084, 7133–7134 (8 February 2007).

1375 PW-057, Ex. P02279 (confidential), PT. 15812 (closed session) (26 September 2007).

1376 Ex. P01537a (an intercept at 6:03 a.m. on 12 July referring to a column from Jaglići); Ex. P01227d (an intercept at 6:58 a.m. on 12 July in which one participant reports on the location of the column); Ex. P01228b (an intercept at 7:55 a.m. on 12 July in which one member of the VRS says that "[a] large column of Turkish groups is pouring into Rainci"); Ex. P00660a, p. 1 (an intercept at 4:40 p.m. on 12 July in which Obrenović says that the Bosnian Muslims are in Bokčin Potok, Lolići). *See also* Ex. P02530; Ex. P02529; Ex. P01215, pp. 3–4; Mirko Trivić, Ex. P01197, PT. 11844–11845, 11847–11848 (21 May 2007), PT. 11984–11989 (23 May 2007).

1377 Ex. P01335, p. 3; Milenko Pepić, Ex. P01628, PT. 13549, 13551–13552 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13468 (28 June 2007). Mladić ordered Borovčanin to block the advance of the column by deploying members of the Special Police Brigade to the Kravica–Konjević Polje road. Ex. P01335, p. 3; Ex. P02238, pp. 1–2.

1378 Ex. P01335, p. 3; Dobrisav Stanojević, Ex. P01264, PT. 12880–12881 (19 June 2007); Milenko Pepić, Ex. P01628, PT. 13552 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13470–13471 (28 June 2007); Ex. P00660a, p. 1 (an intercept at 4:40 p.m. on 12 July, in which Obrenović says that the civilian police set up an ambush on the road from Konjević Polje to Hrnčići).

1379 PW-052, Ex. P01598, PT. 8581, 8585, 8599, 8600–8602 (private session), 8603–8604 (9 March 2007); Mendeljev Đurić, Ex. P01620, PT. 10812–10813, 10819, 10865–10870 (2 May 2007); Ex. P01335, p. 3.

1380 Milenko Pepić, Ex. P01628, PT. 13549 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13468–13471 (28 June 2007); Dobrisav Stanojević, Ex. P01264, PT. 12880–12881, 12883 (19 June 2007); Ex. P01335, p. 3; Mendeljev Đurić, Ex. P01620, PT. 10812–10813, 10866 (2 May 2007).

1381 Dobrisav Stanojević, Ex. P01264, PT. 12880 (19 June 2007), PT. 12917 (20 June 2007) (testifying that he thought that there were some VRS troops to his right along the Bratunac–Konjević Polje road when he was deployed at Sandići); Predrag Čelić, Ex. P01633, PT. 13470–13471 (28 June 2007) (testifying that he was aware of police or VRS forces along the Bratunac–Konjević Polje road in the area of Kravica and in the direction of Konjević Polje); Vincentius Egbers, Ex. P01142, PT. 2722–2723 (18 October 2006) (testifying that he saw a large number of heavily armed infantry along the road from Bratunac and vehicles with a giant wolf's head on them which he believed belonged to the Drina Wolves).

1382 Ex. P01335, p. 3; Dobrisav Stanojević, Ex. P01264, PT. 12882 (19 June 2007); Richard Butler, T. 16671 (14 July 2011). *See also* Predrag Čelić, Ex. P01633, PT. 13483 (28 June 2007).

1383 In the *Popović et al.* case Trivić was challenged over the date of the meeting but he stood by his testimony that it occurred on 12 July 1995 because that was what his notes said (Ex. P01444, pp. 25–28). He also recalled coming to the meeting after he had been to the Jahorina feature. *See* Mirko Trivić, Ex. P01197, PT. 11976–11979, 11982–11983 (23 May 2007). Trivić explained that he took his notes while the meeting was ongoing. Typically Trivić

hour later, Mladić arrived.[1385] At the meeting, the troops of some units and brigades, including the Bratunac and Milići Brigades, that had been deployed in the defence area of the Drina Corps, were assigned to secure the Bratunac–Konjević Polje–Milići road, along with MUP forces.[1386]

318. Members of the Special Police Brigade and the 1st Company of the Zvornik PJP remained over the night of 12 July on the Konjević Polje–Bratunac road[1387] and on 13 July they were reinforced by additional Zvornik PJP members and Jahorina Recruits.[1388] Overall there was a heavier presence of Bosnian Serb Forces along the road from Bratunac through Konjević Polje to Milići on 13 July than on 12 July.[1389]

319. During the night of 12 July and into 13 July the attacks on members of the column continued in the area of the Bratunac–Konjević Polje road.[1390] During this period Bosnian Serb Forces called upon the Bosnian Muslims from the column to surrender.[1391] Many surrendered as a result,[1392] but some killed themselves rather than surrender.[1393] Others surrendered because they

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added his notes in the evening before he went to bed in order to look back at what happened that day. Mirko Trivić, T. 8622–8623 (9 December 2010).

1384 Mirko Trivić, Ex. P01197, PT. 11837–11840 (21 May 2007), PT. 11974–11975 (23 May 2007).

1385 Mirko Trivić, Ex. P01197, PT. 11841 (21 May 2007). The disposition of the troops that had taken Srebrenica was discussed. *See infra* para. 206.

1386 Mirko Trivić, Ex. P01197, PT. 11844 (21 May 2007), PT. 11985 (23 May 2007). Trivić did not recall who issued this order, but ultimately General Krstić as operations commander gave this assignment. Mirko Trivić, Ex. P01197, PT. 11845 (21 May 2007).

1387 Ex. P02238, p. 2; Milenko Pepić, Ex. P01628, PT. 13594 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13472 (28 June 2007); Dobrisav Stanojević, Ex. P01264, PT. 12883–12886 (19 June 2007). The MP was also present on the Bratunac–Konjević Polje road on 13 July. Momir Nikolić, T. 12398–12405 (6 April 2011); PW-075, Ex. P02065 (confidential), PT. 3817–3822 (private session), 3829–3833 (private session) (8 November 2006); PW-075, Ex. P02066, PT. 3822–3824 (8 November 2006). Djurić testified that in the late afternoon of 13 July members of the 1st Company of the Jahorina Recruits was again deployed on the Bratunac–Konjević Polje road. Mendeljev Djurić, Ex. P01620, PT. 10819 (2 May 2007).

1388 Ex. P01335, p. 3 (a report by Borovčanin in which he stated that on 13 July, since the situation was getting more complex because of the advance of the Bosnian Muslim formation that had managed to break through towards Cerska, the 5th Company of the Zvornik PJP and the 2nd MUP company from the Jahorina Recruits were also engaged).

1389 Vincentius Egbers, Ex. P01142, PT. 2755 (19 October 2006) (testifying that when he escorted a convoy of buses from Potočari to Kladanj he saw "hundreds of soldiers" on the road to Milići on 13 July and more than on the previous day).

1390 PW-006, Ex. P02797, PT. 7039–7040 (7 February 2007); PW-015, Ex. P00110, KT. 2946 (14 April 2000); Mevludin Orić, Ex. P00069, PT. 884 (28 August 2006). Zoran Petrović's video shows a Praga and BOV firing their anti-aircraft guns from the Bratunac–Konjević Polje road on the afternoon of 13 July. Thomas Blaszczyk, T. 7604–7605 (11 November 2010); Ex. P01349, 00:12:12–00:16:24. Members of the Bosnian Serb Forces stationed along the Bratunac-Konjević Polje road testified that there was sporadic shooting and shelling on 12 and 13 July. Dobrisav Stanojević, Ex. P01264, PT. 12883 (19 June 2007); Milenko Pepić, Ex. P01628, PT. 13554 (9 July 2007); Predrag Čelić, Ex. P01633, PT. 13483 (28 June 2007).

1391 Momir Nikolić, T. 12403–12404 (6 April 2011); PW-075, Ex. P02065 (confidential), PT. 3821 (private session) (8 November 2006); PW-075, Ex. P02066, PT. 3896–3897 (9 November 2006); Predrag Čelić, Ex. P01633, PT. 13474-13475 (28 June 2007); Milenko Pepić, Ex. P01628, PT. 13553–13554 (9 July 2007); PW-022, Ex. P00097, PT. 3958 (15 November 2006); PW-015, Ex. P00110, KT. 2946, 3007–3008 (14 April 2000); PW-007, T. 522–523 (11 March 2010); Mevludin Orić, Ex. P00069, PT. 884–885 (28 August 2006); PW-008, Ex. P01450, BT. 1384, 1386 (21 July 2003); PW-014, T. 17741 (8 September 2011); PW-014, Ex. P02617, PT. 3516 (2 November 2006).

1392 PW-022, Ex. P00097, PT. 3958 (15 November 2006); PW-015, Ex. P00110, KT. 2948 (14 April 2000).

1393 PW-015, Ex. P00110, KT. 2946–2947, 2998 (14 April 2000); PW-015, T. 1379 (26 April 2010).

were reassured by the sight of UN vehicles which had in fact been taken by the Bosnian Serb Forces;[1394] and others surrendered because they thought there was no alternative.[1395] On 13 July thousands of Bosnian Muslims were captured along the Bratunac–Konjević Polje road.[1396]

320. Previously in the afternoon of 12 July, the MP Battalion of the 65th Protection Regiment was patrolling in the area of Nova Kasaba and Jela.[1397] The MP Battalion, which was based at Nova Kasaba, consisted at this time of about 20 soldiers and officers.[1398] After the capture of approximately three Bosnian Muslims at 6:30 or 7:00 a.m. on 13 July,[1399] Zoran Malinić, the MP Battalion Commander,[1400] requested reinforcements from the Regimental Command.[1401] As a result a platoon from the 67th Communications Regiment and an APC company consisting of APCs and between about 30 and 50 men arrived before 9:00 a.m. or even earlier.[1402] After the arrival of the APC Company, the gap through which the column of Bosnian Muslims was able to advance was reduced.[1403] In an intercepted conversation at 10:15 a.m. Beara said that there were "400 Balijas" at Konjević Polje and gave instructions regarding prisoners in the Nova Kasaba Football Field.[1404] During the morning hundreds of Bosnian Muslims were captured in the area of Nova Kasaba.[1405]

1394 Momir Nikolić, T. 12403–12404 (6 April 2011); Mevludin Orić, Ex. P00069, PT. 884–885 (28 August 2006); PW-015, Ex. P00110, KT. 3002 (14 April 2000); PW-014, Ex. P02617, PT. 3516 (2 November 2006); PW-014, T. 17741–17743 (8 September 2011). *See also* Vincentius Egbers, Ex. P01142, PT. 2759, 2768 (19 October 2006) (testifying that a DutchBat soldier told him that on the morning of 13 July he had had to go through the woods on a UN APC driven by a Bosnian Serb, identifying himself as a UN peacekeeper, and calling to the Bosnian Muslims that it would be safe for them to come out).

1395 PW-006, Ex. P02797, PT. 6973 (6 February 2007); PW-008, Ex. P01449, PT. 3349–3350 (31 October 2006).

1396 Momir Nikolić, T. 12403–12404 (6 April 2011); PW-015, Ex. P00110, KT. 2948 (14 April 2000); PW-075, Ex. P02065 (confidential), PT. 3831 (private session) (8 November 2006); Ex. P02798, Disc 2, 00:27:40–00:28:11, p. 83; Adjudicated Fact 540.

1397 Ex. P00660a, p. 2; PW-057, Ex. P02279 (confidential), PT. 15991–15992 (closed session) (28 September 2007); PW-057, T. 15449 (closed session) (14 June 2011); Zoran Malinić, T. 15309–15310 (8 June 2011). *See also* Adjudicated Fact 532 (indicating that Bosnian Serb Forces launched an artillery attack against the column that was crossing the asphalt road between the area of Konjević Polje and Nova Kasaba).

1398 Zoran Malinić, T. 15309–15310 (8 June 2011). Savčić testified that on the morning of 13 July Malinić had at his disposal only 15 men in the Nova Kasaba sector. Milomir Savčić, Ex. P02418, PT. 15250 (12 September 2007). Dragomir Keserović testifed that on 17 July Malinić told him that the MP unit at Nova Kasaba consisted of between 100 to 150 troops. Dragomir Keserović, T. 13964–13965 (11 May 2011). The Chamber prefers the testimony of Malinić and Savčić on this point since they were much more familiar with the MP Battalion of the 65th Protection Regiment.

1399 Zoran Malinić, T. 15313–15315 (8 June 2011), T. 15331 (9 June 2011). *See also* Milomir Savčić, Ex. P02418, PT. 15249, 15251 (12 September 2007). There is evidence that some Bosnian Muslims from the column were captured on 12 July in the area of Nova Kasaba. Vincentius Egbers, T. 7094 (1 November 2010); Vincentius Egbers, Ex. P01142, PT. 2724–2726 (18 October 2006).

1400 Zoran Malinić, T. 15300, 15305 (8 June 2011).

1401 Zoran Malinić, T. 15316–15317 (8 June 2011). *Cf.* Milomir Savčić, Ex. P02418, PT. 15249–15252 (12 September 2007).

1402 Zoran Malinić, T. 15318–15320 (8 June 2011); Milomir Savčić, Ex. P02418, PT. 15252, 15256, 15259 (12 September 2007).

1403 Zoran Malinić, T. 15320 (8 June 2011).

1404 Ex. P00663a; Ex. P00663b (confidential), pp. 1–2; Zoran Malinić, T. 15321–15324 (8 June 2011), T. 15331–15332 (9 June 2011).

1405 PW-018, Ex. P01173, KT. 3190–3193 (23 May 2000) (testifying that on the morning of 13 July when he was between Nova Kasaba and Konjević Polje he saw the VRS surround a group of about 2,000 or 3,000 people from the column and that the VRS killed between 200 and 300 from this group, but most of the group were captured

By 2:45 p.m. combat was still taking place in this area and Bosnian Muslims were still surrendering.[1406]

321. Despite the capture of so many Bosnian Muslims from the column on 13 July, approximately 3,000 to 4,000 succeeded in crossing the Bratunac–Konjević Polje–Milići road and advancing in the direction of Cerska.[1407]

2. Detention along the Bratunac–Konjević Polje–Milići Road

(a) Konjević Polje

322. On the morning of 13 July Momir Nikolić asked Duško Jević to contact the MUP deployed on the Bratunac–Konjević Polje road to tell them that the people captured there should be assembled in Konjević Polje and then transferred to Bratunac to facilities designated for their detention.[1408]

323. During that morning some 30 Bosnian Muslim men including four or five wounded, surrendered to members of the Bosnian Serb Forces near Konjević Polje.[1409] Upon reaching the Bratunac–Konjević Polje road, this group came across approximately 300 additional Bosnian Muslims that had surrendered at Konjević Polje, including approximately 20 wounded.[1410] The Bosnian Muslim prisoners were told to leave their wounded at the intersection of the Bratunac–Konjević Polje and Nova Kasaba–Konjević Polje roads, and then they were detained in a building at the intersection.[1411] Water was brought to the prisoners, but it was insufficient.[1412] After some 20 minutes in the building, three or four trucks with canvas covers arrived and the Bosnian Muslims were ordered to get on the trucks, which then departed in the direction of Nova Kasaba.[1413]

324. Also, during the morning of 13 July, some other Bosnian Muslims who had been captured by or surrendered to members of the Bosnian Serb Forces were detained in a small building near a

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and forced towards the road between Nova Kasaba and Konjević Polje); Ex. P01176 (showing the route taken by PW-018).

1406 Ex. P00526a, pp. 1–2; Zoran Malinić, T. 15360–15362 (9 June 2011).

1407 Ex. P01335, p. 3 (report by Borovčanin dated 5 September 1995 in which he estimates that 3,000 to 4,000 "enemy soldiers" managed to pass along the Nova Kasaba to Konjević Polje segment towards Cerska and further to Sapna and Crni Vrh); Adjudicated Fact 533; Zoran Malinić, T. 15313, 15315 (8 June 2011), T. 15331 (9 June 2011); Richard Butler, T. 16671–16672 (14 July 2011). *See also* Ex. P02529.

1408 Momir Nikolić, T. 12397–12398 (6 April 2011). Duško Jević was Assistant Commander for Training and Operations in the Special Police Brigade. PW-052, Ex. P01597 (confidential), PT. 8567 (private session) (9 March 2007).

1409 PW-015, Ex. P00110, KT. 2948 (14 April 2000).

1410 PW-015, Ex. P00110, KT. 2948 (14 April 2000).

1411 PW-015, Ex. P00110, KT. 2949 (14 April 2000).

1412 PW-015, Ex. P00110, KT. 2949 (14 April 2000).

1413 PW-015, Ex. P00110, KT. 2949–2950 (14 April 2000). *See also infra* paras. 335–341.

school in the Konjević Polje area guarded by members of the MUP who were stationed there.[1414] These prisoners were escorted by a member of the MUP, across a meadow, to a building guarded by four members of the Bosnian Serb Forces where they were interrogated.[1415] Some time later this group of Bosnian Muslims was taken to an empty house nearby and detained there with several other Bosnian Muslim prisoners including a boy between 14 and 15 years old who was beaten during his detention there.[1416] During the day, three more Bosnian Muslim men were brought into the house.[1417] A member of the MUP came into the room where the group was detained and took four of them including the boy to the building at the intersection in Konjević Polje.[1418]

325. After entering the building, 12 of the prisoners were beaten with rifle butts by members of the Bosnian Serb Forces, and then ordered by a member of the Bratunac MUP[1419] to remove their clothing and line up against a wall where they were again beaten.[1420] A Bosnian Serb man arrived at the building at one point and said that the prisoners were to be exchanged, to which the Bratunac MUP member responded that no exchange would take place because he intended to kill the prisoners.[1421] The Bosnian Muslim prisoners were then ordered to get dressed and were transferred to another room where they were again beaten by their captors.[1422] They were then driven to the banks of the Jadar River where they were shot.[1423]

326. During the afternoon of 13 July, there were MUP personnel and prisoners moving in groups along the road from Sandići to Konjević Polje as well as many prisoners in Konjević Polje itself.[1424] Bosnian Muslims were gathering at the intersection in Konjević Polje and were being directed by Bosnian Serb soldiers to go into the building there.[1425]

327. During the evening of 13 July, more Bosnian Muslim men were captured by or surrendered to Bosnian Serb Forces deployed along the Konjević Polje road, and were also detained in the building at the intersection in Konjević Polje.[1426] Later that night these prisoners, guarded by

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1414 PW-004, Ex. P00442, KT. 3243–3251, 3253–3254 (23 May 2000); PW-004, Ex. P00441 (confidential), KT. 3251–3253 (private session) (23 May 2000).
1415 PW-004, Ex. P00442, KT. 3254–3261 (23 May 2000).
1416 PW-004, Ex. P00442, KT. 3262–3264 (23 May 2000). *See also* Jean-René Ruez, T. 935 (29 March 2010); Ex. P00094, pp. 36–37.
1417 PW-004, Ex. P00442, KT. 3263–3264 (23 May 2000).
1418 PW-004, Ex. P00442, KT. 3264, 3269 (23 May 2000); PW-004, T. 2717–2718 (private session) (15 June 2010); Ex. P00462. *See also* Jean-René Ruez, T. 935–937 (29 March 2010), Ex. P00094, pp. 38–39.
1419 PW-004, Ex. P00442, KT. 3268–3270, 3274 (23 May 2000); PW-004, Ex. P00441 (confidential), KT. 3267–3268 (private session) (23 May 2000). *See also* Momir Nikolić, T. 12408 (6 April 2011).
1420 PW-004, Ex. P00442, KT. 3269–3270, 3274 (23 May 2000).
1421 PW-004, T. 2740–2741 (15 June 2010); PW-004, Ex. P00442, KT. 3270, 3285–3286 (23 May 2000).
1422 PW-004, Ex. P00442, KT. 3270–3271 (23 May 2000).
1423 *See infra* paras. 345–348.
1424 Momir Nikolić, T. 12403–12404 (6 April 2011).
1425 PW-075, Ex. P02066, PT. 3824–3825 (8 November 2006). PW-075 testified that he believed that the Bosnian Muslims who were in the building at the intersection were transferred to Bratunac. *Ibid.*
1426 Mevludin Orić, Ex. P00069, PT. 885–889 (28 August 2006); Mevludin Orić, T. 810–811 (22 March 2010).

members of the MP, boarded buses.[1427] The buses then departed, stopping briefly near the village of Kravica where other Bosnian Muslim prisoners boarded, before the buses continued to the Vuk Karadžić School in Bratunac.[1428] Momir Nikolić was convinced on 13 July that despite what was being said to the prisoners about being exchanged, all those who were captured on the Konjević Polje road would be taken to Bratunac and killed.[1429] At one point, when Mladić was in Konjević Polje, Nikolić asked what was going to happen to the prisoners and Mladić did not respond orally, but made a gesture by moving his hand palm down from left to right across his chest,[1430] which Nikolić understood to mean that the prisoners would be killed.[1431]

(b) Sandići Meadow[1432]

328. The Chamber notes as a preliminary matter that the Prosecution submitted that no evidence had been adduced to support its allegation in the Indictment that 10–15 men at Sandići Meadow were killed by members of the Jahorina Training Facility.[1433] The Chamber accepted this submission, advising the Accused that he need not address this particular allegation of killings in his defence case.[1434] The Chamber, therefore, considers the evidence about the events in Sandići Meadow only inasmuch as that evidence relates to the transfer and detention of Bosnian Muslims.

329. Throughout the day of 13 July 1995, Bosnian Muslim men emerged from the woods and hills and were assembled in groups near the Konjević Polje–Bratunac road,[1435] where members of the Bosnian Serb Forces guarded them and ordered them to leave their knapsacks in piles and/or

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1427 Mevludin Orić, Ex. P00069, PT. 890–894 (28 August 2006), PT. 1123 (31 August 2006) (stating that the personnel who boarded the bus wore sleeveless blue flak jackets over uniforms that had round patches on their sleeves with the letters "VP" which stood for the Military Police).

1428 Mevludin Orić, Ex. P00069, PT. 897–898, 908 (28 August 2006). *See also infra* paras. 382–383.

1429 Momir Nikolić, T. 12398–12399, 12406–12407 (6 April 2011).

1430 Momir Nikolić, T. 12400–12401 (6 April 2011). Mladić addressed the prisoners in Konjević Polje and said in the briefest terms that they would be transferred and that they should not worry. Momir Nikolić, T. 12400 (6 April 2011).

1431 Momir Nikolić, T. 12405–12406 (6 April 2011).

1432 The Indictment alleges that throughout the day of 13 July 1995, Bosnian Muslim prisoners were captured and detained by MUP forces, including elements of the 2nd Šekovići Detachment of the RS Special Police, elements of the 1st PJP Company of the Zvornik Municipality Police, and a unit of RS police officers from the Jahorina Training Facility, under the command and control of Ljubomir Borovčanin. The prisoners were held at Sandići Meadow, approximately 12 kilometres west of Bratunac along the Bratunac-Konjević Polje road, until the late afternoon or early evening, when they were taken form the meadow to other locations, including schools in the Bratunac area and the Kravica Warehouse. Indictment, para. 21.4.1.

1433 Prosecution's Submission Concerning Paragraphs 21.4.1 and 49 of the Indictment, 11 October 2011, para. 1.

1434 T. 17973–17974 (5 December 2011).

1435 PW-006, Ex. P02797, PT. 6973–6974 (6 February 2007), PT. 7052–7054 (7 February 2007); PW-005, Ex. P00261, PT. 7085–7088 (8 February 2007); PW-014, Ex. P02617, PT. 3517, 3543 (2 November 2006); Ex. P00991, 02:51:35–02:51:38; PW-007, T. 523–525 (11 March 2010); PW-008, Ex. P01450, BT. 1384–1388 (21 July 2003). *See also* Jean-René Ruez, T. 938 (29 March 2010); Ex. P00094, p. 41; Erin Gallagher, T. 6962 (28 October 2010); Tomasz Blaszczyk, T. 7632–7633, 7635 (11 November 2010); Ex. P01251, pp. 56, 58.

relinquish any valuables.[1436] They were then detained in Sandići Meadow—a large meadow on the opposite side of the road from a burnt-out house.[1437]

330. Over the course of 13 July, approximately 1,000–2,000 Bosnian Muslims were detained there.[1438] There were also some women and young children.[1439] The prisoners, placed in rows or groups, were guarded by armed members of the Bosnian Serb Forces.[1440] Some of the members of

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1436 PW-006, Ex. P02797, PT. 6973–6974 (6 February 2007), PT. 7052–7054 (7 February 2007); PW-005, Ex. P00261, PT. 7085, 7088 (8 February 2007); PW-014, Ex. P02617, PT. 3518, 3523–3525, 3532–3533, 3545–3546 (2 November 2006); Ex. P00991, 02:51:35–02:51:38; PW-007, T. 524–525 (11 March 2010); PW-008, Ex. 01450, BT. 1384–1388 (21 July 2003); PW-008, Ex. P01449, PT. 3352, 3366–3367 (31 October 2006); Adjudicated Fact 237. Some of those who were in the column and eventually surrendered were dressed in uniforms. Dobrisav Stanojević, T. 7976 (23 November 2010); Predrag Čelić, Ex. P01633, PT. 13478 (28 June 2007). *See also* Ex. P00991, 02:51:35–02:51:50. A young Bosnian Muslim man wearing a camouflage t-shirt was ordered to remove the shirt and taken into one of the houses as the rest of the group continued on. This was filmed by a cameraman. He was never seen again. PW-014, Ex. P02617, PT. 3521, 3529–3530, 3534 (2 November 2006); PW-014, Ex. P02237 (confidential), PT. 3518–3519, 3521 (private session), 3544 (private session) (2 November 2006); Ex. P02623; Ex. P00991, 02:51:55–02:52:11.

1437 PW-005, Ex. P00261, PT. 7085–7088 (8 February 2007); PW-006, Ex. P02797, PT. 6973 (6 February 2007); PW-007, T. 525 (11 March 2010); PW-008, Ex. P01450, BT. 1389 (21 July 2003); PW-014, Ex. P02617, PT. 3523–3524, 3527–3530, 3534 (2 November 2006); Ex. P02627; Ex. P02628; PW-014, Ex. P02237 (confidential), PT. 3538 (private session) (2 November 2006); Ex. P00991, 02:37:42–02:38:44; Dobrisav Stanojević, Ex. P01264, PT. 12885, 12901 (19 June 2007); Ex. P01277; Dobrisav Stanojević, T. 7976 (23 November 2010). *See also* Tomasz Blaszczyk, T. 7629–7630 (11 November 2010); Ex. P01251, pp. 54–55; Jean-René Ruez, T. 937, 940–947 (29 March 2010); Ex. P00094, pp. 42–48; Ex. P00079; Ex. P00991, 02:39:52–02:40:10. In relation to the meadow, the Chamber notes that PW-005 was told by another Bosnian Muslim prisoner that the meadow was at Lolići. PW-005, Ex. P00261, PT. 7086, 7110–7111 (8 February 2007). In light of the majority of witnesses who refer to the meadow as being in the region of Sandići and relevant documentary as well as audio-visual evidence, the Chamber finds that the location where these prisoners were held, which is visible in Ex. P00991, 02:37:42–02:38:44, was Sandići Meadow.

1438 The Chamber notes that the Adjudicated Fact 236 estimates 1,000–4,000 people were detained at Sandići Meadow. However, many witnesses stated that there were approximately 1,000–2,000 people detained in total. PW-008, Ex. P01450, BT. 1386, 1391 (21 July 2003) (estimating approximately 2,000); PW-008, Ex. P01449, PT. 3352 (31 October 2006) (testifying that there were a thousand or two thousand Bosnian Muslims); PW-005, Ex. P00261, PT. 7086 (8 February 2007) (testifying that other prisoners estimated the number reached 2,000 although PW-005 himself did not attempt to calculate this at the time); PW-006, Ex. P02797, PT. 6975 (6 February 2007), PT. 7051–7052 (7 February 2007) (estimating 1,500–2,000 or more in total); PW-014, Ex. P02617, PT. 3524 (2 November 2006), PT. 3557–3560 (3 November 2006) (estimating the number at 900–1,000 when he arrived at the meadow at around 3:00 p.m. and indicating that it increased in the afternoon although not significantly); Ex. P00991, 02:38:58. *But see* PW-066, Ex. P01734 (confidential), PT. 17890 (closed session) (19 November 2007) (estimating the number at 200 prisoners while the witness was at the meadow at around noon, although he saw more prisoners arriving as he left); Zoran Petrović, T. 14493 (23 May 2011) (estimating number of prisoners as approximately 100 when he passed by the area by car). The Chamber is of the view that this difference in estimation is partly due to the different times in which various people were at the meadow, and partly due to the inherent vagaries of estimating numbers of people. In light of the totality of the evidence, the Chamber finds that approximately 1,000–2,000 people were captured and detained in total.

1439 PW-006, Ex. P02797, PT. 6976 (6 February 2007); PW-007, T. 525 (11 March 2010). *See also* Tomasz Blaszczyk, T. 7635–7641 (11 November 2010); Ex. P01251, p. 58; Ex. P01349, 00:23:19, 00:23:49.

1440 PW-005, Ex. P00261, PT. 7088–7089 (8 February 2007) (testifying that next to a tank, there was a man in a "civilian uniform"); PW-006, Ex. P02797, PT. 6973–6974 (6 February 2007) (testifying that most of the guards wore multicoloured camouflage uniforms), PT. 7054 (7 February 2007) (testifying that another group of soldiers in black uniforms arrived at the meadow); PW-007, T. 525–526 (11 March 2010) (stating that one of these guards was a young soldier with a black bandana around his head, who appeared to be in charge and was telling new arrivals that they would be exchanged the following day and that some of these guards, those referred to as "Arkan's men", wore newer uniforms); PW-014, Ex. P02617, PT. 3525–3526 (2 November 2006) (stating that some VRS soldiers wore camouflage green and coffee coloured bullet-proof vests worn by UNPROFOR); PW-014, Ex. P02237 (confidential), PT. 3566 (private session) (3 November 2006) (stating that there were three different kinds of uniforms); PW-008, Ex. P01450, BT. 1386–1387, 1391–1392 (21 July 2003) (testifying that he was surrendered to soldiers in olive drab multicoloured uniforms, that after a while some soldiers in blue

the Bosnian Serb Forces guarding the prisoners were from the 1st PJP Company.[1441] The members of the 2nd Šekovići Detachment and the Jahorina Recruits, as well as Borovčanin, were also present in the area of the Sandići Meadow during this time.[1442] There was a UN APC,[1443] two tanks, and a Praga in and around the meadow.[1444]

331. None of the prisoners were given food or medical treatment.[1445] The wounded were taken to a house beside the meadow and did not return.[1446] A few prisoners, including children, were allowed to collect and bring back water for the other prisoners.[1447] Because it was very hot on the meadow, a water truck came a few times and sprayed the prisoners with water.[1448] The Chamber finds that throughout the detention, some prisoners were not mistreated,[1449] but others prisoners were singled out and did not return, or were mistreated by the guards.[1450]

332. Later that afternoon a convoy of buses and trucks carrying Bosnian Muslim women and children from Potočari in the direction of Tuzla stopped on the asphalt road near Sandići Meadow;

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camouflage uniforms arrived at the meadow, and that later a "Serb" soldier in a green one-piece camouflage uniform and a black bandana around his head addressed the prisoners); PW-008, Ex. P01449, PT. 3367–3368 (31 October 2006); Momir Nikolić, T. 12403–12404 (6 April 2011). *See also* Ex. P00624, p. 83; Ex. P02799, p. 109.

1441 Dobrisav Stanojević, Ex. P01264, PT. 12897–12898 (19 June 2007); Dobrisav Stanojević, T. 7967–7968, 7973–7974 (23 November 2010); Ex. P00624, pp. 79, 98, 102. Stanojević testified that the prisoners were guarded by his units and other units. Dobrisav Stanojević, T. 7975 (23 November 2010). *See also* Ex. P02799, pp. 105–107, 114–116, 123–124, 126, 128.

1442 Dobrisav Stanojević, Ex. P01264, PT. 12894 (19 June 2007) (stating that he was quite certain that the individual appearing Ex. P00624, p. 80, was a policeman from Skelani whose nickname was "Čop" and who belonged to the Šekovići Detachment of the Special Police Brigade), 12896 (identifying his colleague of the 1st PJP Company and the other from the Special Police Brigade); Predrag Čelić, Ex. P01633, PT. 13470, 13477, 13489–13490, 13503 (28 June 2007); Ex. P00624, pp. 80–81, 101; Ex. P02799, pp. 106–107, 111–119, 125; Zoran Petrović, T. 14493–14494 (23 May 2011).

1443 PW-006, Ex. P02797, PT. 6978 (6 February 2007); PW-007, T. 525 (11 March 2010). *See also* PW-014, Ex. P02617, PT. 3524–3525 (2 November 2006) (stating that before surrendering he saw a UN APC, but once he came to the meadow, he did not see it anymore).

1444 PW-005, Ex. P00261, PT. 7088 (8 February 2007); PW-006, Ex. P02797, PT. 6986 (7 February 2007); PW-008, Ex. P01450, BT. 1387, 1389–1390 (21 July 2003); PW-014, Ex. P02617, PT. 3524 (2 November 2006). *See also* Tomasz Blaszczyk, T. 7589–7590 (10 November 2010), T. 7601–7602 (11 November 2010); Ex. P01251, p. 28; Ex. P00624, pp. 84, 95–96.

1445 PW-007, T. 554 (11 March 2010). *See also* Adjudicated Fact 239.

1446 PW-005, Ex. P00261, PT. 7088 (8 February 2007); PW-006, Ex. P02797, PT. 6975 (6 February 2007); PW-007, T. 554 (11 March 2010); PW-008, Ex. P01450, BT. 1397 (21 July 2003). *See also* Jean-René Ruez, T. 943–944 (29 March 2010; Ex. P00078; Adjudicated Fact 240.

1447 PW-005, Ex. P00261, PT. 7088 (8 February 2007); PW-006, Ex. P02797, PT. 6974 (6 February 2007); PW-014, Ex. P02617, PT. 3533–3534 (2 November 2006). Some prisoners were offered a drink of liquor or a cigarette. PW-005, Ex. P00261, PT. 7088 (8 February 2007); PW-007, T. 554 (11 March 2010).

1448 PW-005, Ex. P00261, PT. 7088 (8 February 2007); PW-006, Ex. P02797, PT. 7047–7048 (7 February 2007); PW-066, Ex. P01738 (confidential), BT. 7871 (closed session) (20 April 2004); PW-066, Ex. P01734 (confidential), PT. 17886 (closed session) (19 November 2007).

1449 PW-005, Ex. P00261, PT. 7088 (8 February 2007); PW-006, Ex. P02796 (confidential), PT. 7044–7045 (private session) (7 February 2007); PW-006, Ex. P02797, PT. 7054 (7 February 2007); PW-066, Ex. P01735 (confidential), PT. 17891 (closed session) (19 November 2007).

1450 PW-006, Ex. P02797, PT. 6974–6976, 6980 (6 February 2007); PW-005, Ex. P00261, PT. 7088–7090 (8 February 2007); PW-014, Ex. P02617, PT. 3530–3535 (2 November 2006); PW-007, T. 526 (11 March 2010); PW-008, Ex. P01450, BT. 1396–1397 (21 July 2003); PW-008, Ex. P01449, PT. 3368 (31 October 2006); PW-008, T. 8873 (14 December 2010).

the women and children, as well as those who appeared to be under the age of 18 who had been detained at the meadow were allowed to leave on those buses and trucks.[1451]

333. Some time later in the afternoon of 13 July, Mladić arrived and promised the prisoners they would be exchanged, rejoin their families who had been transported safely to Tuzla, or taken where they wanted to go.[1452] Mladić left approximately five to ten minutes later.[1453]

334. During that afternoon, a number of the prisoners were transported out of Sandići Meadow to Kravica Warehouse.[1454] Other prisoners were put on buses, trucks, and trailers which had arrived from the direction of Konjević Polje.[1455] Guarded by the members of the Bosnian Serb Forces, the vehicles filled with prisoners headed to Bratunac town.[1456]

(c) The Nova Kasaba Football Field

335. Throughout 13 July 1995, a number of other Bosnian Muslims who had surrendered to the Bosnian Serb Forces were brought to the Nova Kasaba Football Field ("Field").[1457] One group consisting of about 300 Bosnian Muslims first surrendered to the Bosnian Serb Forces[1458] in the area along the Bratunac–Nova Kasaba–Konjević Polje road, and was then transported on civilian

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1451 PW-006, Ex. P02797, PT. 6976–6978 (6 February 2007); PW-007, T. 525–526 (11 March 2010); PW-008, Ex. P01450, BT. 1388, 1393 (21 July 2003); PW-008, T. 8903–8904 (14 December 2010); Zoran Petrović, T. 14493–14494 (23 May 2011). PW-014 stated that he snuck on to one of these buses when he went to get water, hid under some bags, and the bus left the meadow with him onboard. PW-014, Ex. P02617, PT. 3535 (2 November 2006). The Bosnian Serb Forces used their discretion in sending those who looked old enough to carry guns back to the meadow rather than letting them on the buses. PW-006, Ex. P02797, PT. 6977 (6 February 2007); PW-007, T. 526 (11 March 2010); PW-008, Ex. P01450, BT. 1393 (21 July 2003); PW-008, T. 8904 (14 December 2010).

1452 PW-005, Ex. P00261, PT. 7089–7090 (8 February 2007); PW-006, Ex. P02797, PT. 6977–6978 (6 February 2007); PW-007, T. 527 (11 March 2010). *See also* Adjudicated Fact 238; PW-052, Ex. P01598, PT. 8586 (9 March 2007), PT. 8641–8642 (12 March 2007) (PW-052 first stated that he saw Mladić addressing the prisoners on 12 July, but later he said he was not certain about the date. Considering PW-052's movements around this period, the Chamber is satisfied that PW-052 saw this event on 13 July 1995.) Mladić was accompanied by a few soldiers or escorts who were in uniforms and some journalists who filmed and took photographs of the prisoners. PW-006, Ex. P02797, PT. 6977 (6 February 2007).

1453 PW-006, Ex. P02797, PT. 6977 (6 February 2007).

1454 *See infra* paras. 353–376.

1455 PW-007, T. 527–528 (11 March 2010); PW-008, Ex. P01450, BT. 1397 (21 July 2003); PW-008, Ex. P01449, PT. 3368 (31 October 2006). *See also* Adjudicated Fact 241 (Approximately 30 men were taken away on a truck, with spades and pickaxes, and were not seen again).

1456 PW-007, T. 528 (11 March 2010). There was a blue VW Golf police car behind the convoy, and the prisoners were told not to jump off the back of the vehicles. PW-008, Ex. P01450, BT. 1398 (21 July 2003); PW-008, Ex. P01449, PT. 3370–3371 (31 October 2006).

1457 Ex. P01156; Ex. P00094, p. 33; Ex. P00858; Ex. P00113; Ex. D00028. Several witnesses identified the Nova Kasaba Football Field. *See, e.g.,* PW-015, T. 1326–1327, 1383–1386 (26 April 2010); Zoran Malinić, T. 15349–15351 (9 June 2011); Vincentius Egbers, Ex. P01142, PT. 2725–2726 (18 October 2006).

1458 PW-015 testified that the members of the Bosnian Serb Forces wore dark blue camouflage uniforms, adding that he could not tell whether the uniforms were lighter or darker in colour. He further stated that he did not know the difference between the police camouflage uniforms and army camouflage uniforms. PW-015, Ex. P00110, KT. 2948–2949 (14 April 2000).

trucks to the Field.[1459] Another group of 11 Bosnian Muslims who had been captured by members of the Bosnian Serb Forces were first detained in the elementary school in Nova Kasaba,[1460] which was used as the headquarters of the MP Battalion of the 65th Protection Regiment,[1461] and then made to walk to the Field.[1462] From the direction of Konjević Polje along the Konjević Polje–Nova Kasaba road and from the woods, more Bosnian Muslim men arrived there on foot.[1463]

336. The prisoners were ordered to leave all their belongings at the entrance of the Field,[1464] at which about 15 to 20 armed soldiers were waiting for them.[1465] Between 1,500 and 3,000 Bosnian Muslim men and boys were detained there, all sitting in rows[1466] and guarded by members of the MP Battalion.[1467] The armed soldiers were also present across the entire field, cursing the prisoners

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1459 PW-015, Ex. P00110, KT. 2945–2946, 2948–2952 (14 April 2000); PW-015, T. 1325–1329, 1403 (26 April 2010); Ex. P00113. *See also supra* para. 323.

1460 PW-016, Ex. P01762, KT. 3017–3019 (14 April 2000).

1461 Zoran Malinić, T. 15312 (8 June 2011); Ex. P01157; Mirko Trivić, Ex. P01197, PT. 11860–11861 (21 May 2007), PT. 12002 (23 May 2007); Petar Salapura, T. 13579–13580 (3 May 2011); Dragomir Keserović, T. 13963–13964 (11 May 2011); Vincentius Egbers, Ex. P01142, T. 2758 (19 October 2006); Ex. P01157; Jean-René Ruez, T. 923 (29 March 2010); Ex. P00094, pp. 28–29.

1462 PW-016, Ex. P01762, KT. 3020–3022 (14 April 2000). The school building was a few hundred metres from the Field. Tomasz Blaszczyk, T. 3735 (8 July 2010).

1463 PW-016, Ex. P01762, KT. 3023–3024 (14 April 2000).

1464 PW-015, Ex. P00110, KT. 2950, 2952 (14 April 2000); PW-015, T. 1325, 1327–1328 (26 April 2010); Ex. P00113; Adjudicated Fact 542.

1465 PW-015, T. 1325, 1327–1328, 1383 (26 April 2010); Ex. P00113.

1466 PW-015, Ex. P00110, KT. 2950–2952 (14 April 2000) (estimating "between 2,500 [and] 3,000"); PW-015, T. 1325–1326, 1382–1383 (26 April 2010) (estimating "at least 2,000" and "2,000 to 3,000"); PW-016, Ex. P01762, KT. 3022–3023 (14 April 2000) (estimating 1,500 to 2,000); PW-016, T. 9411 (3 February 2011) (stating that there were also boys among the prisoners); Zoran Malinić, T. 15349–15351, 15396–15397 (9 June 2011) (testifying that based on the size of the Field, at 2:00 p.m. on 13 July there were up to 300 or 400 prisoners and that later when the prisoners were bussed out from the Field, the number had grown to between 1,000 and 1,200); Ex. P00858; Mirko Trivić, Ex. P01197, PT. 11859–11860 (21 May 2007) (seeing on 13 July a large group of people sitting); Milomir Savčić, Ex. P02418, PT. 15249–15252, 15259 (12 September 2007) (testifying that Malinić told him on the morning of 13 July that there were a few prisoners there, but when he called again that day, he said that there was a "continuous stream of larger groups of people" and that later on 13 July, the number reached 1,200); Dragomir Keserović, T. 13966, 14101 (11 May 2011) (testifying that on 17 July 1995 Malinić said that on the evening between 12 and 13 July and during 13 July, about 2,500 or 3,000 prisoners had been in the Field); Petar Salapura, T. 13579, 13592 (3 May 2011) (testifying that on 13 July 1995 he set off for Han Pijesak and first stopped at "Konjević Polje", where he saw some sort of stadium with "quite a few prisoners there" and that after 1:00 or 2:00 p.m. he again passed by the location, where approximately 500 prisoners were held); Ex. P02205 (an intercepted conversation dated 13 July 1995 at 10:15 a.m. indicates that Malinić and Salapura are in the Field, where there were "around 500 prisoners"); Robert Franken, Ex. P00598, PT. 2509–2510 (16 October 2006) (stating that after 13 July, OP-Alpha crews reported that they saw a large group of men kneeling with their hands on their necks on a soccer field alongside a road north of the enclave); Adjudicated Fact 541 (an estimated 1,500 and 3,000 men captured from the column were held prisoners on the Field). The Chamber finds that all the witnesses testified about the prisoners in the Nova Kasaba Football Field. The Chamber also notes that there is evidence that a number of Bosnian Muslims were detained on the Field throughout 12 July 1995. Vincentius Egbers, Ex. P01142, PT. 2724–2725 (18 October 2006), PT. 2748–2749 (19 October 2006), PT. 2865 (20 October 2006); Ex. P01147, p. 2; Vincentius Egbers, T. 7089–7090, 7094 (1 November 2010), T. 7190 (2 November 2010); Ex. P01302; Ex. P01145, pp. 4–5.

1467 Zoran Malinić, T. 15351–15354 (9 June 2011); Ex. P02277; Mirko Trivić, Ex. P01197, PT. 11860–11861 (21 May 2007), PT. 12002 (23 May 2007); Milomir Savčić, Ex. P02418, PT. 15249–15250 (12 September 2007). *See also* PW-015, Ex. P00110, KT. 2950–2952 (14 April 2000); PW-015, T. 1325, 1328, 1383 (26 April 2010); Ex. P00113; PW-016, Ex. P01762, KT. 3021–3022 (14 April 2000); Ex. P00125; Vincentius Egbers, Ex. P01142, PT. 2725–2726 (18 October 2006). *See also* Jean-René Ruez, T. 923–924 (29 March 2010); Ex. P00094, pp. 30–32; Ex. P00077.

and giving them orders.[1468] Colonel Petar Salapura, Chief of Intelligence Administration of Sector for Intelligence and Security Affairs,[1469] was also present in the vicinity of the Field.[1470] There were several APCs and a combat vehicle on the road next to it.[1471]

337. On the afternoon of 13 July, Mladić arrived at the Field in an olive-green coloured APC.[1472] He insulted and cursed the prisoners, saying that "we'll see whether we'll send you to Krajina, to Fikret Abdić, or [...] to the Batkovići camp".[1473] He said that they would be given food and water.[1474] However, although there is evidence that food and water were provided for the prisoners,[1475] such food and water as they received was inadequate.[1476] Mladić also said that special units with dogs were covering the woods in order to prevent anyone from crossing the Nova Kasaba–Konjević Polje road.[1477] At that moment a Bosnian Muslim prisoner stood up and VRS soldiers kicked and hit him with their rifle butts and then a soldier shot and killed him with a pistol, but Mladić did not react to this.[1478] Later Mladić left the Field in the direction of Konjević Polje.[1479]

338. Malinić issued an order to his soldiers to register the prisoners in compliance with rules of the MP and nearly all the prisoners were listed.[1480] Several days later, Malinić told Dragomir

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1468 PW-015, Ex. P00110, KT. 2952 (14 April 2000); PW-015, T. 1325–1326 (26 April 2010). According to Malinić, there was also a medical station at the Field to administer first aid. Zoran Malinić, T. 15353–15354 (9 June 2011); Ex. P02277. *See also* Milomir Savčić, Ex. P02418, PT. 15252–15253 (12 September 2007).

1469 *See supra* paras. 103–104.

1470 Petar Salapura, T. 13579, 13592 (3 May 2011); Zoran Malinić, T. 15341–15342 (9 June 2011); Ex. P02205.

1471 PW-016, Ex. P01762, KT. 3022–3023 (14 April 2000); Zoran Malinić, T. 15351–15352 (9 June 2011); Ex. P02277.

1472 PW-015, Ex. P00110, KT. 2953 (14 April 2000); PW-016, Ex. P01762, KT. 3024 (14 April 2000); Dragomir Keserović, T. 13966 (11 May 2011); Zoran Malinić, T. 15378 (9 June 2011); Adjudicated Fact 547.

1473 PW-015, Ex. P00110, KT. 2953–2954 (14 April 2000). *See also* PW-015, T. 1386 (26 April 2010); PW-016, Ex. P01762, KT. 3024 (14 April 2000).

1474 PW-015, Ex. P00110, KT. 2953 (14 April 2000); PW-015, T. 1386 (26 April 2010); PW-016, Ex. P01762, KT. 3024 (14 April 2000).

1475 Zoran Malinić, T. 15382–15383 (9 June 2011) (testifying that as far as he knew there was no abuse of prisoners, they were given water, and food was ordered for them through the President of the Milići municipality); Milomir Savčić, Ex. P02418, PT. 15252–15253 (12 September 2007) (testifying that Malinić told him that he had asked the Command of the Milići Brigade for bread and other food for the prisoners).

1476 PW-015, Ex. P00110, KT. 2955 (14 April 2000) (testifying that the prisoners did not receive any food or water).

1477 PW-015, Ex. P00110, KT. 2992 (14 April 2000). A camera was filming Mladić and the prisoners. PW-016, Ex. P01762, KT. 3024–3025 (14 April 2000); PW-016, T. 9400 (3 February 2011); Zoran Malinić, T. 15387–15389 (9 June 2011); Milomir Savčić, Ex. P02418, PT. 15253–15257 (12 September 2007).

1478 PW-016, Ex. P01762, KT. 3024 (14 April 2000). *See also* Zoran Malinić, T. 15383, 15397 (9 June 2011) (testifying that there was one instance of killing when a prisoner attacked a soldier of the MP Battalion).

1479 PW-016, Ex. P01762, KT. 3025 (14 April 2000) (testifying that Mladić left the Field when "the lists [of prisoners] were made").

1480 Zoran Malinić, T. 15376–15379, (9 June 2011). The lists were eventually handed over to the Command of the Regiment. Zoran Malinić, T. 15397 (9 June 2011). Savčić stated that on the morning of 13 July, Malinić called him about the prisoners and Savčić told him to treat the prisoners in accordance with the rules of MP, put them in adequate facilities and under his protection. Savčić also confirmed that if a POW was in the hands of parts of the MP units that were re-subordinated to the Drina Corps, the unit would have to act in line with the Drina Corps order dated 13 July 1995 (Ex. P01202). Milomir Savčić, Ex. P02418, PT. 15249–15252, 15293–15297 (12 September 2007); Ex. P01202, p. 7; Ex. P01600, p. 2. When shown Ex. P00526a (intercepted conversation dated 13 July 1995, at 2:45 p.m.) indicating that Malinić called Savčić, Malinić stated that he did not remember whether he called Savčić, allowing for the possibility that they talked on the phone several times during 13 July. Zoran Malinić, T. 15361–15362 (9 June 2011). PW-016's account of the registration of the prisoners was different

Keserović, Chief of the Section for MP of the VRS Main Staff,[1481] that Beara had issued or passed on the order to Malinić to take the prisoners to the Field and register them[1482] and he did so until Mladić had told him to stop because there was no need for registration since the prisoners were to be transferred to Tuzla.[1483] An intercepted conversation on 13 July 1995 at 11:25 a.m. records that Beara sent four buses, two trucks, and one trailer truck to "Kasaba" for the transportation of captured Muslims, who "will be sent to a camp in the village of Batković, where a selection will be made between the war criminal [*sic*] or just soldiers". According to Butler, the investigation found no evidence of any Muslims POWs arriving at Batković Collection Centre on this day.[1484]

339. After Mladić's departure, the prisoners were ordered to board trucks and buses.[1485] They left the Field in the early evening, under the escort of the members of the MP Battalion,[1486] and were transported to Kravica Warehouse[1487] or Bratunac town.[1488] When the last escorted convoy transporting the Bosnian Muslim women and children to Kladanj returned towards Potočari on 13 July, the Field was empty apart from the body of a dead man and a pile of burning personal belongings.[1489]

340. On their way back from Kladanj after having escorted a convoy of buses from Potočari on 13 July, approximately 13 DutchBat officers, including Lieutenant Vincentius Egbers, were blocked at the Field by members of the MP Battalion and taken to their Headquarters.[1490] Their cars and equipment were also taken away.[1491] At the Headquarters, Egbers made a complaint about this to

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from Malinić's. According to PW-016, Mladić ordered the soldiers to list those who had been captured, whereas according to Malinić the process of registration was interrupted by Mladić on his arrival. PW-016, Ex. P01762, KT. 3024 (14 April 2000); Zoran Malinić, T. 15376–15379 (9 June 2011). On this issue, the Chamber accepts Malinić's account since he was directly involved in the process.

1481 *See supra* paras. 105–109.

1482 Dragomir Keserović, T. 13966–13968 (11 May 2011), T. 14081 (12 May 2011), T. 14092, 14133–14137 (16 May 2011); Ex. P02221, p. 82. Keserović stated that either on 16 or 17 July 1995 he heard from the Accused that Beara was somewhere in the Drina Corps' zone of responsibility. Dragomir Keserović, T. 13968 (11 May 2011).

1483 Dragomir Keserović, T. 13966 (11 May 2011), T. 14092, 14139 (16 May 2011). Malinić testified that he did not remember whether he told Keserović about this. Zoran Malinić, T. 15378–15379 (9 June 2011).

1484 Richard Butler, T. 16714 (18 July 2011); Ex. P02537.

1485 PW-015, Ex. P00110, KT. 2954–2955 (14 April 2000); PW-016, Ex. P01762, KT. 3025, 3027, 3049 (14 April 2000).

1486 PW-015, Ex. P00110, KT. 2955 (14 April 2000); PW-016, Ex. P01762, KT. 3025, 3027–3028 (14 April 2000); Dragomir Keserović, T. 13967 (11 May 2011), T. 14093 (16 May 2011); Zoran Malinić, T. 15397 (9 June 2011). Keserović stated that the members of the MP Battalion were issued the assignment to transfer the prisoners by Mladić. Dragomir Keserović, T. 14100 (16 May 2011).

1487 *See infra* paras. 353–376.

1488 *See infra* paras. 382–385.

1489 Adjudicated Fact 546. *See also* PW-015, Ex. P00110, KT. 2954 (14 April 2000) (stating that when the prisoners were trying to pick up their bags at the entrance, they were told that they would not need them any longer); Dragomir Keserović, T. 14135 (16 May 2011) (testifying that Malinić told him that identification documents were taken from some prisoners).

1490 Vincentius Egbers, Ex. P01142, PT. 2756–2759, 2824 (19 October 2006); Vincentius Egbers, T. 7192 (2 November 2010); Ex. P01145, p. 5; Zoran Malinić, T. 15357 (9 June 2011). *See also* Milomir Savčić, Ex. P02418, PT. 15249 (12 September 2007).

1491 Vincentius Egbers, Ex. P01142, PT. 2757–2760, 2768 (19 October 2006); Vincentius Egbers, T. 7096–7097 (1 November 2010), T. 7192 (2 November 2010); Zoran Malinić, T. 15357 (9 June 2011).

Malinić, who said that he would need to contact Beara, as he would arrange a safe return for the DutchBat officers to Potočari.[1492] On the morning of 14 July 1995, Beara arrived at the Headquarters in a luxury car.[1493] Egbers handed over to Beara a written complaint and asked him to bring the DutchBat officers to the UN compound in Potočari.[1494] Subsequently, Malinić transported them on a MP APC to Potočari.[1495]

341. While Egbers was in Nova Kasaba, he saw about 20 or 30 Bosnian Muslim men and boys being detained in a small house, which was situated in front of the Headquarters of the MP Battalion.[1496] Throughout the evening of 13 July, he heard shots in the environs of the Headquarters.[1497] Next morning, he and his colleague went to the house and saw the prisoners still alive.[1498] Two boys were taken outside of the house to be used as human shields against Bosnian Muslims firing at the Headquarters.[1499]

3. Killings in the Bratunac Area (13–14 July)

(a) Bratunac Brigade Headquarters[1500]

342. At approximately 10:00 a.m. on 13 July 1995[1501], members of the special forces or "specials"[1502] brought as prisoners to the Bratunac Brigade Headquarters[1503] the following Bosnian

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1492 Vincentius Egbers, Ex. P01142, PT. 2757–2760, 2784–2789, 2799–2800, 2824 (19 October 2006); Ex. P01145, p. 6; Ex. P01146, pp. 2–3. Malinić testified that he informed his superior, Lieutenant-Colonel Jovo Jazić of the presence of the DutchBat officers and that Jazić "probably relayed this information to the Main Staff command". Zoran Malinić, T. 15357–15360 (9 June 2011).

1493 Vincentius Egbers, Ex. P01142, PT. 2776, 2778, 2824 (19 October 2006); Vincentius Egbers, T. 7085–7086 (1 November 2010); Ex. P01164, p. 3. Egbers described Beara "as a tall man with grey hair but with an atmosphere of a colonel. He was in a camouflage suit wearing a colonel's ranking". Vincentius Egbers, Ex. P01142, PT. 2776 (19 October 2006). Egbers's identification of Beara was extensively challenged during cross-examination in the *Popović et al.* case. *See* Vincentius Egbers, Ex. P01142, PT. 2819–2831 (19 October 2006); Ex. P01145, p. 7: Ex. P01146, p. 3; Ex. P01155, p. 2. Malinić testified that he was "not 100 per cent sure" that Beara was present at the headquarters but it was "highly probable" that he was. Zoran Malinić, T. 15360 (9 June 2011). Based on this evidence, the Chamber is satisfied beyond reasonable doubt that Beara was present at the headquarters on the morning of 14 July 1995.

1494 Vincentius Egbers, Ex. P01142, PT. 2779 (19 October 2006); Vincentius Egbers, T. 7086 (1 November 2010).

1495 Vincentius Egbers, Ex. P01142, PT. 2778–2779 (19 October 2006); Zoran Malinić, T. 15358–15359 (9 June 2011) (stating that Egbers left when he received an approval from his command—either the one in Split or the one in Potočari—that he could leave).

1496 Vincentius Egbers, Ex. P01142, PT. 2773–2775 (19 October 2006); Vincentius Egbers, T. 7092–7093 (1 November 2010); Ex. P01303.

1497 Vincentius Egbers, Ex. P01142, T. 2773–2775 (19 October 2006).

1498 Vincentius Egbers, Ex. P01142, PT. 2774–2775 (19 October 2006); Vincentius Egbers, T. 7092–7093 (1 November 2010); Ex. P01303.

1499 Vincentius Egbers, Ex. P01142, T. 2775 (19 October 2006).

1500 The Indictment alleges that on 13 July 1995, six Bosnian Muslim men from Srebrenica were captured by MUP forces. Under the orders of Ljubiša Beara, these six prisoners were turned over to and interrogated by security personnel from the Bratunac Brigade at the Bratunac Brigade Headquarters. They were then placed among the other Muslim prisoners in Bratunac, and thereafter summarily executed by unknown persons. The Indictment records the identification details of the six men in question. Indictment, para. 21.1.

1501 Zlatan Čelanović, Ex. P00637, PT. 6628 (31 January 2007).

1502 Zlatan Čelanović, Ex. P00637, PT. 6632, 6645 (31 January 2007). The soldiers wore new overalls with modern belts; some wore multi-coloured camouflage uniforms and others wore black or dark blue overalls or fatigues.

Muslim men: Nazif Avdić,[1504] Munib Dedić,[1505] Aziz Husić,[1506] Mujo Husić,[1507] and Hasib Ibišević.[1508] Zlatan Čelanović, a lawyer working in Morale, Religion, and Legal Affairs in the Bratunac Brigade,[1509] approached the soldiers and asked to identify the Bosnian Muslim prisoners.[1510] This followed a conversation Čelanović had had with Beara on the night of 12 July or the morning of 13 July, in which he had told Čelanović that "it would be good for [Čelanović] to ask for IDs" and check the identity of those brought to the military police building in Bratunac against the names of those who were alleged to have "sinned" against the Serb people.[1511] In accordance with this instruction, Čelanović interviewed each of the five Bosnian Muslim prisoners outside his office at the Bratunac Brigade Headquarters.[1512]

343. Rešid Sinanović, a Bosnian Muslim man from the column, surrendered to Bosnian Serb Forces in the morning of 13 July 1995.[1513] Sometime after 10 a.m. on 13 July Momir Nikolić,[1514] together with a policeman brought Sinanović to Čelanović's office to be questioned about his

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Zlatan Čelanović, Ex. P00637, PT. 6645, 6647, 6671 (31 January 2007); Ex. P00646, p. 4. The soldiers were referred to as "specials" and this, combined with their new style of uniforms, led Čelanović to conclude they were members of elite VRS special forces or a special military police unit. Zlatan Čelanović, Ex. P00637, PT. 6632–6633, 6645 (31 January 2007).

1503 The Bratunac Brigade Headquarters were located in the Kaolin factory building in Bratunac. Zlatan Čelanović, Ex. P00637, PT. 6628 (31 January 2007).

1504 Zlatan Čelanović, Ex. P00637, PT. 6658 (31 January 2007); Ex. P00640. The Indictment refers to a "Zazif Avdić, son of Ramo, date of birth: 15 September 1954," Indictment, para. 22.1(a). The Chamber notes, however, that Zlatan Čelanović's handwritten notes of the interrogation refer to "Nazif Avdić", with the same father and date of birth specified in the Indictment. The Chamber considers these to be the same person and the spelling of his first name in the Indictment to be a typographical error.

1505 Zlatan Čelanović, Ex. P00637, PT. 6658 (31 January 2007); Ex. P00640. The Indictment refers to a "Munib Dedić, son of Emin, date of birth: 26 April 1956," Indictment, para. 22.1(b). The Chamber notes that Zlatan Čelanović's handwritten notes of the interrogation refer to the date of birth of Munib Dedić, son of Emin as "26 April 1966". The Chamber finds that the same person is being referred to.

1506 Zlatan Čelanović, Ex. P00637, PT. 6658 (31 January 2007); Ex. P00640.

1507 Zlatan Čelanović, Ex. P00637, PT. 6655 (31 January 2007); Ex. P00638.

1508 Zlatan Čelanović, Ex. P00637, PT. 6659 (31 January 2007); Ex. P00641. Hasib Ibišević had fled Srebrenica on 11 July 1995 to escape through the woods. Šehra Ibišević, Ex. P01526 (21 June 2000), pp. 3–5.

1509 Zlatan Čelanović, Ex. P00637, PT. 6626, 6630, 6684 (31 January 2007); Zlatan Čelanović, T. 3650–3651 (7 July 2010); Ex. P00646, p. 2.

1510 Zlatan Čelanović, Ex. P00637, PT. 6632 (31 January 2007).

1511 Zlatan Čelanović, Ex. P00637, PT. 6630–6632 (31 January 2007). Čelanović took this as an order. *See* Zlatan Čelanović, T. 3615–3616 (7 July 2010).

1512 Zlatan Čelanović, Ex. P00637, PT. 6637, 6644–6645 (31 January 2007); Zlatan Čelanović, T. 3615–3616 (7 July 2010). Čelanović said of the five Bosnian Muslim prisoners: "Obviously they weren't soldiers but civilians, or at least some of them." Zlatan Čelanović, Ex. P00637, PT. 6637 (31 January 2007).

1513 Zlatan Čelanović, Ex. P00637, PT. 6671 (31 January 2007); Ex. P00639; PW-063, T. 6528–6529 (19 October 2010).

1514 Zlatan Čelanović, Ex. P00637, PT. 6629 (31 January 2007).

alleged participation in war crimes.[1515] Nikolić then left.[1516] Sinanović was interviewed for approximately two hours.[1517]

344. After the interviews, the "specials" took all six of these men[1518] to the Vuk Karadžić School, where they were detained.[1519] The remains of five of these six men[1520] were later identified at gravesites associated with the Srebrenica-related missing.[1521] The Chamber finds that as alleged in the Indictment the six men were turned over to and interrogated by personnel from the Bratunac Brigade at the Bratunac Brigade Headquarters and detained with other Bosnian Muslims in Bratunac, and that the only reasonable conclusion is that these men were subsequently killed by Bosnian Serb Forces.

(b) Jadar River[1522]

345. Sometime between 9:00 a.m. and noon on 13 July 1995[1523] at the warehouse at the intersection in Konjević Polje,[1524] four Bosnian Serb policemen armed with automatic rifles put 16

1515 PW-075, Ex. P02066, PT. 3827 (8 November 2006); Zlatan Čelanović, Ex. P00637, PT. 6628, 6633–6635 (31 January 2007); Momir Nikolić, T. 12401–12402 (6 April 2011). *Cf.* PW-063, T. 6528–6529 (19 October 2010) (stating that he was told it was a policeman named Mirko Perić who escorted Sinanović to Bratunac Brigade Headquarters).

1516 Zlatan Čelanović, Ex. P00637, PT. 6634 (31 January 2007).

1517 Zlatan Čelanović, Ex. P00637, PT. 6636, 6697 (31 January 2007); PW-063, Ex. P00867, PT. 9224 (22 March 2007).

1518 Zlatan Čelanović, Ex. P00637, PT. 6645, 6697 (31 January 2007). Čelanović had informed the members of the special forces that Sinanović was also a prisoner and they entered his office and took Sinanović away. Zlatan Čelanović, Ex. P00637, PT. 6697 (31 January 2007).

1519 The Chamber reaches this conclusion on the basis of the initial query by the "specials" for directions to the elementary school, the short amount of time it took for the "specials" to drop the six prisoners off and return, and the fact that other Bosnian Muslim detainees were being held at that time in and around Vuk Karadžić School. *See* Zlatan Čelanović, Ex. P00637, PT. 6632, 6645 (31 January 2007). *See also infra* paras. 382–385. The Chamber also notes that the phrases "Vuk Karadžić elementary school" and "Branko Radičević school" are often used interchangeably. *See, e.g.*, Zlatan Čelanović Ex. P00637, PT. 6639, 6690 (31 January 2007); Zlatan Čelanović, T. 3606, 3640–3642 (7 July 2010). The elementary school known as "Vuk Karadžić" before the war, containing a complex of buildings including a gym and a warehouse or hangar, was renamed "Branko Radičević" during the war, while another school was given the name "Vuk Karadžić". Zlatan Čelanović, T. 3641–3642 (7 July 2010); PW-066, Ex. P01738 (confidential), BT. 7916 (closed session) (20 April 2004); PW-066, Ex. P01734 (confidential), PT. 17867–17868 (closed session) (19 November 2007); PW-063, Ex. P00867, PT. 9221 (22 March 2007). Any references to Vuk Karadžić school in this judgement therefore refer to the former school, identified as Vuk Karadžić in Ex. P01044. This school was located next to the municipal buildings. PW-063, Ex. P00867, PT. 9221 (22 March 2007).

1520 *See* Annex C: Confidential Annex.

1521 Ex. P01940 (confidential); Ex. P01777 (confidential), pp. 25, 45, 89–91, 190. There is evidence that Rešid Sinanović escaped or was released from VRS custody, swam across the Drina River into Serbian territory where he was treated for a gunshot wound at a hospital on 15 July 1995, and then was somehow taken back to the custody of the VRS. Ex. P00642, p. 3; Ex. P01253, p. 2; Ex. P01254; PW-063, T. 6556–6557, 6568–6575, 6580–6582 (20 October 2010); Momir Nikolić, T. 12402–12403 (6 April 2011).

1522 The Indictment alleges that at approximately 11:00 a.m. on 13 July 1995, working with individuals and units of the VRS and/or MUP, a small squad of soldiers consisting of at least one Bratunac police officer (Bratunac MUP) captured approximately 16 Bosnian Muslim men from the column of men retreating from the Srebrenica enclave, transported them from Konjević Polje to an isolated area on the bank of the Jadar River, and summarily executed 15 of them. One individual was wounded and managed to escape. Indictment, para. 21.2.

1523 PW-004, Ex. P00442, KT. 3286–3287 (23 May 2000); PW-004, Ex. P00460, PT. 3277 (30 October 2006).

1524 PW-004, T. 2717 (private session) (15 June 2010); Ex. P00462.

Bosnian Muslim prisoners from the column, including a boy approximately 15 years old,[1525] on a bus; these were the same four Bosnian Serb policemen, including Nenad Deronjić, who had mistreated the prisoners earlier.[1526] The policemen boarded the bus with two at the front and two at the back.[1527] The bus drove north for approximately three to five kilometres[1528] and stopped at the side of the road, where the prisoners got out and lined up against a fence.[1529] The same four Bosnian Serb policemen got out of the bus, which drove off.[1530]

346. The policemen ordered the prisoners down to the bank of the Jadar River, 15 to 30 metres below.[1531] After a short pause while the prisoners waited along the bank of the river in line, the policemen opened fire on the prisoners.[1532] As the other Bosnian Muslim prisoners fell around PW-004, he was shot from behind in the hip[1533] and threw himself forward into the river.[1534] He was fired upon as the water carried him downstream but the policemen were unable to follow on the banks of the river because of the terrain.[1535]

347. As part of the investigations conducted by the Prosecution which began in February 1996, Jean-René Ruez and other investigators searched the terrain at the identified execution site on the bank of the Jadar River for shell casings and other forensic evidence.[1536] They were unable to find any; Ruez suggested that the forensic evidence may have been washed away by the river.[1537]

348. The Chamber notes that PW-004 was the only witness who gave evidence in this case about the killings at the Jadar River site. It is established jurisprudence that the testimony of a single witness on a material fact does not require corroboration.[1538] PW-004's evidence was subject to cross-examination by the Accused. The Chamber observed the witness's demeanour and character in court. No material inconsistencies were found between PW-004's prior testimony and his

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1525 *See supra* paras. 322–327.

1526 PW-004, Ex. P00442, KT. 3272 (23 May 2000). The bus was driven by a woman wearing a white T-shirt and shorts. PW-004, Ex. P00442, KT. 3271–3272 (23 May 2000). *See also supra* paras. 322–327.

1527 PW-004, Ex. P00442, KT. 3272, 3274 (23 May 2000).

1528 PW-004, T. 2717 (private session) (15 June 2010); Ex. P00443. *See* Jean-René Ruez, T. 957 (29 March 2010); Ex. P00094, pp. 74–75.

1529 PW-004, Ex. P00442, KT. 3275 (23 May 2000); PW-004, T. 2719, 2721 (15 June 2010). Jean-René Ruez, T. 959–960 (29 March 2010); Ex. P00094, p. 78.

1530 PW-004, Ex. P00442, KT. 3276 (23 May 2000).

1531 PW-004, Ex. P00442, KT. 3276 (23 May 2000); PW-004, T. 2718–2719, 2721 (15 June 2010); Ex. P00463.

1532 PW-004, Ex. P00442, KT. 3276–3277 (23 May 2000); PW-004, T. 2721 (15 June 2010).

1533 PW-004, Ex. P00442, KT. 3277 (23 May 2000); PW-004, T. 2720–2721 (15 June 2010); Ex. P00448; Ex. P00464.

1534 PW-004, Ex. P00442, KT. 3277 (23 May 2000); PW-004, T. 2719, 2721 (15 June 2010); Ex. P00094, pp. 78–80.

1535 PW-004, Ex. P00442, KT. 3277 (23 May 2000); PW-004, T. 2721–2722 (15 June 2010). PW-004 was eventually able to get himself out of the river and into a meadow. PW-004, Ex. P00442, KT. 3278 (23 May 2000). He met up with other Bosnian Muslim men on 14 July 1995 and made his way to Nezuk by 16 July 1995. PW-004, Ex. P00460, PT. 3277–3279 (30 October 2006); PW-004, T. 2741–2742 (15 June 2010).

1536 Jean-René Ruez, T. 915, 960 (29 March 2010); Ex. P00094, pp. 79–80.

1537 Jean-René Ruez, T. 960 (29 March 2010). At the time the investigation was conducted, the water level had changed since the events of 13 July 1995. PW-004, T. 2719 (15 June 2010), commenting on Ex. P00094, p. 79.

testimony in this case. Having carefully evaluated and weighed PW-004's evidence, the Chamber finds that four Bosnian Serb policemen, including at least one member of the Bratunac MUP, Nenad Deronjić, executed 15 Bosnian Muslim prisoners including a 15 year-old boy at an isolated location on the bank of the Jadar River on 13 July 1995.

(c) Cerska Valley [1539]

349. At approximately 2:00 p.m. on 13 July 1995, two or three buses followed by an APC and a backhoe excavator were seen driving towards Cerska along the Cerska Valley road,[1540] which was in the zone of operations of the Drina Corps, either the Milići Brigade or the Vlasenica Brigade.[1541] The sound of light arms and machine gun fire was heard, lasting about half an hour.[1542] The buses came back the same way, followed by the APC and some time later the backhoe excavator.[1543]

350. The Chamber notes that while the circumstance of the executions of Bosnian Muslims in the Cerska Valley is solely based on the adjudicated facts, forensic evidence corroborates this. Between 7 and 18 July 1996,[1544] on the southwest side of an embankment along the Cerska Valley road,[1545] investigators from the Prosecution and forensic anthropologists from PHR discovered and exhumed a mass grave.[1546] The grave contained the remains of 150 males;[1547] autopsies revealed that 149 of the victims died of gun shot wounds.[1548] Clusters of shells matching those found with the bodies

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1538 *Tadić* Appeal Judgement, para. 65; *Aleksovski* Appeal Judgement, para. 62; *Čelebići* Appeal Judgement, paras. 492, 506; *Kayishema and Ruzindana* Appeal Judgement, para. 154.

1539 The Indictment alleges that at some time between 13 and 17 July 1995, VRS and/or MUP soldiers transported about 150 Bosnian Muslim men to an area along a dirt road in the Cerska Valley about three (3) kilometres from Konjević Polje, summarily executed them and, using heavy equipment, covered them with dirt. Indictment, para. 21.3.

1540 Jean-René Ruez, T. 948–950 (29 March 2010); Ex. P00094, pp. 50–54; Adjudicated Fact 214.

1541 Adjudicated Fact 224.

1542 Adjudicated Fact 215.

1543 Adjudicated Fact 216.

1544 William Haglund, Ex. P01306, PT. 8905 (15 March 2007); Ex. P01071, p. 11; Ex. P01825, pp. 24, 37. *See also* Adjudicated Fact 217.

1545 William Haglund, Ex. P01359, KT. 3733 (29 May 2000); William Haglund, T. 9111 (31 January 2011); Ex. P01071, pp. 8, 11; Jean-René Ruez, T. 950–951 (29 March 2010); Ex. P00094, pp. 55–57. *See also* Adjudicated Fact 217.

1546 Jean-René Ruez, T. 951–952 (29 March 2010); Ex. P00094, pp. 58–61; Ex. P01071, pp. 8, 11; Ex. P01825, p. 37. The Chamber uses the phrase "grave" to refer to a repository of bodies, regardless of whether the bodies had been buried in a hole in the traditional sense. *See* William Haglund, Ex. P01359, KT. 3737 (29 May 2000); Dean Manning, T. 10201 (22 February 2011).

1547 William Haglund, Ex. P01359, KT. 3734 (29 May 2000); Ex. P01071, pp. 8–9, 21, 51; William Haglund, Ex. P01306, PT. 8910 (15 March 2007); Ex. P01825, p. 37; Adjudicated Fact 219. The mean age of the victims ranged from 14–50 years old, although the two youngest were between 11 and 15 years old. William Haglund, Ex. P01359, KT. 3734 (29 May 2000); Ex. P01071, p. 53; Ex. P01313, p. 3; Adjudicated Fact 220.

1548 William Haglund, Ex. P01359, KT. 3734 (29 May 2000); Ex. P01071, pp. 10, 61–62; Ex. P01825, p. 37; Adjudicated Fact 219. The cause of death of one individual was undetermined. Ex. P01071, p. 62. Haglund stated in the *Popović et al.* case that "147" of the victims had died of gunshot wounds. William Haglund, Ex. P01306, PT. 8910 (15 March 2007). The Chamber finds that the witness inadvertently misstated the number as his report indicates 149 individuals. Many had suffered from multiple gunshot wounds consistent with a "spray" of small calibre, high energy ammunition from automatic or semi-automatic weapons followed by a head shot. William Haglund, Ex. P01359, KT. 3734 (29 May 2000); Ex. P01313, p. 3. The Accused challenged Haglund's report

were discovered on the northeast side of the road, leading investigators and experts to conclude that the victims were lined up at the top of the southwest embankment and shot from the opposite side of the road.[1549] The bodies either fell or were moved down the embankment and were covered with soil that matched that taken by machine from the northeast side of the road.[1550] The terrain on both sides of the road was disturbed in this manner some time between 5 and 27 July 1995.[1551] Forensic evidence suggests the grave had remained undisturbed from time of burial until it was identified and exhumed by investigators.[1552] Ligatures, some of which were associated with wrists or arms tied behind the back, were also found in the grave.[1553] Most of the bodies were in civilian clothing.[1554]

351. On hundred and forty-nine of the exhumed bodies have been identified by DNA analysis; all are reported as missing or dead after the fall of Srebrenica.[1555]

352. The Chamber finds that 150 Bosnian Muslim males were transported along the Cerska Valley road and executed at an embankment on the southwest side of the road sometime on 13 July 1995. Given the context in which these events occurred and the personnel and equipment that

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(Ex. P01071) and Manning's report (Ex. P01825) by pointing to alleged inconsistencies between them with respect to identification documents found at the Cerska Valley site. While according to Ex. P01071, identification items of Body CSK-142 were "card military orders" and a driver's licence, the corresponding identification in Ex. P01825 noted only a driver's licence. Manning stated that he was only indicating "usable identification documents" in his reports and that the other document may have deteriorated by 1998. The second alleged inconsistency was in relation to Body CSK-65, where Ex. P01071 lists "identification card military" while Ex. P01825 lists only "identification card". Manning testified that his report was only a summary of legible information not an exhaustive list of every document for scientific purposes. Dean Manning, T. 10270–10280 (23 February 2011), T. 10325–10327 (24 February 2011); Ex. P01071, p. 65; Ex. P01825, p. 98; Ex. P01933. The Chamber finds that these discrepancies are not significant nor do they render the findings unreliable.

1549 William Haglund, Ex. P01359, KT. 3734–3735 (29 May 2000); William Haglund, T. 9111 (31 January 2011); Ex. P01071, p. 9; Dean Manning, Ex. P01819, PT. 18975 (10 December 2007); Ex. P01825, p. 37; Jean-René Ruez, T. 953 (29 March 2010); Ex. P00094, p. 63.

1550 William Haglund, T. 9111–9112 (31 January 2011); William Haglund, Ex. P01359, KT. 3735 (29 May 2000); Jean-René Ruez, T. 952–953 (29 March 2010); Ex. P01825, p. 37; Adjudicated Fact 218.

1551 Jean-René Ruez, T. 952–953 (29 March 2010); Dean Manning, T. 10344 (24 February 2011); Ex. P00094, p. 62; Ex. P01836; Ex. P01825, p. 36.

1552 Jean-René Ruez, T. 953–954 (29 March 2010); Dušan Janc, T. 1847 (14 May 2010); Dean Manning, T. 10171 (22 February 2011).

1553 William Haglund, Ex. P01359, KT. 3734, 3737 (29 May 2000); Ex. P01071, p. 9 (48 wire ligatures were recovered from 38 bodies); Ex. P01825, p. 22; Adjudicated Fact 222. *See also* William Haglund, Ex. P01306, PT. 8910 (15 March 2007). The autopsies also found that the manner of death for all 150 victims was "homicide". Ex. P01071, p. 62.

1554 William Haglund, Ex. P01359, KT. 3766–3767 (29 May 2000); Ex. P01071, p. 9; Ex. P01313, p. 3 (the property and personal effects found in the clothing were also predominantly civilian); Ex. P01825, pp. 37–38; Adjudicated Fact 221. Although the Accused identified minor inconsistencies between the reports filed by forensic anthropologists and the reports filed by Prosecution investigators with respect to identification documents found at the Cerska Valley site, the Chamber is satisfied that these differences reflect the different purposes and expertise of the authors.

1555 Dušan Janc, T. 1778–1779, 1790 (14 May 2010); Dušan Janc, T. 2022–2025 (18 May 2010); Ex. P00167 (confidential), pp. 3–11; Ex. P00170, pp. 2, 8; Ex. P01940 (confidential). The Chamber notes that Adjudicated Fact 223, which is taken from the *Krstić* case, states that nine of the bodies were identified as persons listed as missing following the take-over of Srebrenica. The number of 149 identified individuals is based on the February 2010 update as a result of the ongoing DNA analysis. Ex. P00170, pp. 2, 5. The Chamber is therefore satisfied that 149 individuals have been thus far identified from the Cerska Valley site.

would have been needed for such an endeavour, the Chamber finds that unknown members of the Bosnian Serb Forces killed these Bosnian Muslims.

(d) Kravica Warehouse and the Related Burial Operation[1556]

353. Kravica Warehouse is a one-storey building located on the Bratunac–Konjević Polje road approximately one kilometre from Sandići Meadow.[1557]

(i) Killings

354. During the afternoon of 13 July Bosnian Serb Forces selected able-bodied individuals from the prisoners detained at Sandići meadow and ordered them to board two buses.[1558] When the buses were packed completely full they made the short drive to Kravica Warehouse.[1559] The prisoners arrived before 2:00 p.m.[1560] and were ordered to run out of the buses as quickly as possible and enter the warehouse.[1561] Members of the Bosnian Serb Forces ordered them to surrender any money or valuables and brought them water although the quantity was inadequate.[1562]

355. After the two buses had left Sandići Meadow,[1563] members of the Bosnian Serb Forces escorted a column of between approximately 600 and 800 prisoners from the meadow along the Bratunac–Konjević Polje road in the direction of Kravica village.[1564] The column of prisoners

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1556 The Indictment alleges that on 13 July 1995, MUP Special Police Forces under the command and control of Ljubomir Borovčanin, including elements of the 2nd Šekovići Detachment of the RS Special Police, elements of the 1st PJP Company of the Zvornik Municipality Police and a unit of RS police officers from the Jahorina Training Facility, captured hundreds of Muslim men from Srebrenica and placed them in a large warehouse in the village of Kravica. Later that day Bosnian Serb Forces under the command and control of Borovčanin summarily executed over 1,000 Bosnian Muslim men detained in the Kravica Warehouse using automatic weapons, hand grenades, and other weaponry. Borovčanin was personally present at the warehouse during part of the executions. On 14 July 1995, under the supervision of Ljubiša Beara, heavy equipment was used to move the victims' bodies to two mass graves in Glogova and Ravnice. Indictment, para. 21.4.

1557 Jean-René Ruez, T. 968–969 (29 March 2010); Tomasz Blaszczyk, T. 3765–3766 (9 July 2010); Ex. P00094, pp. 90–93.

1558 PW-006, Ex. P02797, PT. 6978–6980 (6 February 2007), PT. 7056 (7 February 2007).

1559 PW-006, Ex. P02797, PT. 6978–6981 (6 February 2007).

1560 Jean-René Ruez, T. 971 (29 March 2010); Ex. P00094, p. 96; PW-006, Ex. P02797, PT. 6982–6984 (6 February 2007), PT. 6987–6988 (6 February 2007); Ex. P02793. An aerial photograph of the Kravica Warehouse taken at 2:00 p.m. on 13 July shows two buses adjacent to it. The location of the buses shown in the photograph and in a drawing by PW-006 coincide. *Ibid.* It follows that the buses arrived from Sandići meadow before 2:00 p.m.

1561 PW-006, Ex. P02797, 6987–6988 (7 February 2007); Ex. P02794.

1562 PW-006, Ex. P02797, PT. 6990–6992 (7 February 2007).

1563 PW-006, Ex. P02797, PT. 6987, 6989–6990 (7 February 2007).

1564 PW-005, Ex. P00261, PT. 7090–7091, 7094, 7112–7113 (8 February 2007); Predrag Čelić, Ex. P01633, PT. 13477–13478, 13503 (28 June 2007); Adjudicated Facts 225, 242; PW-018, T. 10866 (7 March 2011). Although PW-018 testified that the column moved along the Konjević Polje–Bratunac road between 9:00 and 10:00 a.m., the evidence of three other witnesses indicates that this took place in the afternoon. Predrag Čelić, Ex. P01633, PT. 13503 (28 June 2007); PW-005, Ex. P00261, PT. 7123 (8 February 2007); PW-006, Ex. P02797, PT. 6981 (6 February 2007), 6989–6990 (7 February 2007). *See also* Adjudicated Fact 225. The Chamber therefore finds that the column from Sandići Meadow arrived at Kravica Warehouse in the afternoon.

entered Kravica Warehouse between approximately 3:00 and 5:00 p.m.[1565] After they had entered, the warehouse was completely full with prisoners sitting shoulder to shoulder.[1566]

356. At approximately 4:30 p.m., Ljubomir Borovčanin, Deputy Commander of the Special Police Brigade,[1567] ordered Rade Čuturić, Commanding Officer of the 2nd Šekovići Detachment of the Special Police Brigade,[1568] to stop traffic from passing by Kravica.[1569] Čuturić then radioed Pepić, a member of the 2nd Šekovići Detachment when he was at the Yellow Bridge near Kravica and ordered him to stop the convoy of buses of Bosnian Muslim women and children, which he did.[1570]

357. PW-006 who was a prisoner at Kravica Warehouse, testified that at one point the Bosnian Serb guards became agitated and angry and there was intense shooting outside, which lasted for approximately half an hour.[1571] Members of the Bosnian Serb Forces were coming in and out of the warehouse during the shooting and seemed to be in a panic, yelling at the prisoners that the Bosnian Muslims had attacked them.[1572]

358. At the same time, after Pepić had stopped the convoy, he heard this intense shooting coming from Kravica.[1573] He also heard Čuturić informing Borovčanin on the radio that someone had been killed.[1574] Afterwards Čuturić, with one of his arms bandaged, stopped at Pepić's position while heading in the direction of Bratunac.[1575] Čuturić explained to Pepić that a Bosnian Muslim prisoner at Kravica Warehouse had taken a rifle from a member of the 3rd Platoon of the 2nd Šekovići Detachment who was called "Krsto" and killed him, and that Čuturić had burned his hand when he grabbed the barrel of the rifle.[1576] Čuturić told Pepić that the Bosnian Muslims were being shot at

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1565 PW-005, Ex. P00261, PT. 7123 (8 February 2007). PW-006, who was taken in one of the two buses to Kravica Warehouse, testified that after the prisoners from the two buses entered the warehouse, more prisoners arrived during a period of approximately two hours. PW-006, Ex. P02797, PT. 6989–6990 (7 February 2007). In the absence of any evidence that other Bosnian Muslim prisoners were taken to Kravica, the Chamber finds that these additional prisoners about whom PW-006 testified were from the column of between approximately 600 and 800 prisoners escorted from Sandići Meadow who had arrived at Kravica Warehouse after the two buses.

1566 PW-006, Ex. P02797, PT. 6990 (7 February 2007).

1567 Milenko Pepić, Ex. P01628, PT. 13539 (9 July 2007).

1568 Milenko Pepić, Ex. P01628, PT. 13538–13539 (9 July 2007).

1569 Tomasz Blaszczyk, T. 7611–7613 (11 November 2010); Zoran Petrović, T. 14476–14478 (23 May 2011); Ex. P01347, pp. 10–11; Ex. P01349, 00:16:32–00:16:54; Milenko Pepić, Ex. P01628, PT. 13532, 13539, 13555–13559 (9 July 2007).

1570 Milenko Pepić, Ex. P01628, PT. 13538, 13556–13557, 13559–13560 (9 July 2007).

1571 PW-006, Ex. P02797, PT. 6992–6995 (7 February 2007).

1572 PW-006, Ex. P02797, PT. 6993–6994, 6998–6999 (7 February 2007).

1573 Milenko Pepić, Ex. P01628, PT. 13560–13561, 13558 (9 July 2007). *See also* Tomasz Blaszczyk, T. 7613, 7617 (11 November 2010).

1574 Milenko Pepić, Ex. P01628, PT. 13560–13561, 13558 (9 July 2007). *See also* Tomasz Blaszczyk, T. 7613, 7617 (11 November 2010).

1575 Milenko Pepić, Ex. P01628, PT. 13561 (9 July 2007).

1576 Milenko Pepić, Ex. P01628, PT. 13562 (9 July 2007). *See also* PW-064, Ex. P01031, PT. 9364 (23 March 2007), PT. 9529 (27 March 2007); PW-064, T. 13426–13427, 13447 (28 April 2011) (testifying that on the evening of

and Pepić could still hear shooting at this time.[1577] Later that afternoon, a pile of approximately 50 bodies was visible in front of the warehouse.[1578] The Bratunac Health Centre logbook contains an entry showing that Čuturić sustained burns to his hand and fingers with "time of wounding" and "place of wounding" given as at 5:40 p.m. that day at Kravica; the next entry in the logbook is for Krsto Dragičević, who is recorded as belonging to the Special Police in Skelani with "time of wounding" and "place of wounding" given as 7:00 p.m. and Kravica respectively and the diagnosis is not entirely legible but appears to be "deceased".[1579]

359. The Chamber finds that a Bosnian Muslim prisoner killed Krsto Dragičević which led to Čuturić sustaining burns to his hand and that this incident caused the Bosnian Serb guards to become agitated and angry and led to the shooting of many Bosnian Muslim prisoners in front of the warehouse as described by PW-006. The Chamber does not accept either the Prosecution submission that the shooting that PW-006 heard when the guards became agitated and angry in fact came from inside the Kravica Warehouse or their submission that the guards were lying when they said that the Bosnian Muslims were attacking.[1580] PW-006 gives a highly specific account of what he heard and saw;[1581] and it is supported by the evidence of the incident in which Čuturić was burnt and the presence of a pile of bodies in front of the warehouse.[1582] The Chamber finds that PW-005, another prisoner at the warehouse, first became aware of shooting in the warehouse when a prisoner had entered and had nowhere to sit,[1583] but this is compatible with shooting having taken place outside the warehouse beforehand.

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13 July a policeman with a burnt hand said that a Bosnian Muslim grabbed a rifle from another policeman and killed him by shooting him and that he then grabbed the barrel of the rifle and burned his hand as a result).

1577 Milenko Pepić, Ex. P01628, PT. 13562–13565 (9 July 2007).

1578 PW-016, Ex. P01762, KT. 3025–3027 (14 April 2000); PW-064, Ex. P01031, PT. 9359-9361 (23 March 2007), PT. 9520–9525 (27 March 2007) (testifying that he saw a pile of at most 50 dead bodies in front of the Kravica Warehouse and that he saw a man in a green camouflage uniform ordering five men to lie on their stomachs near the front of the warehouse and this man shot each of them in the back); Jean-René Ruez, T. 977–980 (29 March 2010); Ex. P00094, pp. 115–122; Ex. P02236; Tomasz Blaszczyk, T. 7643–7644 (11 November 2010); Ex. P01251, p. 60; Ex. P01250, 00:18:07–00:18:09.

1579 Ex. P01042, (confidential) p. 2; PW-064, Ex. P01031, PT. 9530–9531 (27 March 2007); PW-064, T. 13426–13430 (28 April 2011); Milenko Pepić, Ex. P01628, PT. 13598–13599, 13604–13608 (9 July 2007). The Chamber notes that the "time of wounding" given for Čuturić and Dragičević appear to be inconsistent with the evidence that Dragičević was killed that evening just before Čuturić burned his hands. The Chamber further notes that the question mark after the word "deceased" is a notation from the translator of the document, meaning that it was likely, but not certain that this was the original handwritten entry. PW-064, T. 13429–13430 (28 April 2011). Considering the testimony about the incident in which Dragičević was killed and Čuturić burned his hand, the Chamber finds that the times appearing in the "time of wounding" column are likely times of admission to the Bratunac Health Centre, and that the original hand written entry for the diagnosis of Dragičević is correctly translated as "deceased."

1580 Prosecution Final Brief, para. 572.

1581 *See supra* para. 357.

1582 *See supra* para. 358.

1583 PW-005, Ex. P00261, PT. 7095, 7123 (8 February 2007).

360. At some point members of the Bosnian Serb Forces began shooting into the crowded warehouse.[1584] They fired into the warehouse with several kinds of weapons including machineguns, hand grenades, and rocket propelled grenades.[1585] The firing lasted into the night with intermittent lulls in the shooting in which the wounded moaned and called out names.[1586] That night, members of the Bosnian Serb Forces laughed and talked in front of the warehouse.[1587]

361. Pepić held the convoy and Borovčanin passed the warehouse as the shooting continued.[1588] Čuturić later returned to Pepić's position from the direction of Bratunac and sometime in the late afternoon when the shooting had subsided, Čuturić ordered Pepić to let the convoy pass.[1589] Later that night, Čuturić said to Pepić, "Somebody will have to be held accountable for what had happened at the cooperative in Kravica, sooner or later."[1590]

362. The executions at the warehouse continued during the morning of 14 July as members of the Bosnian Serb Forces shouted instructions for wounded prisoners to be helped, stating that the Red Cross had arrived and that any wounded would be transported to a hospital for treatment.[1591] Those who responded to the calls for uninjured or wounded to come out of the warehouse were shot and killed and the soldiers made derogatory comments about their "Turkish mother" and "Islam tribe".[1592] When wounded prisoners exited the warehouse a soldier ordered them to sing Serbian songs; then after approximately half an hour bursts of fire could be heard and there was no more singing.[1593] Shots continued to be fired during this time and at one point someone called out that one of the prisoners was still alive and needed to be shot, which was followed by the sound of individual gunshots.[1594] In the early evening of 14 July, one of the surviving prisoners inside the warehouse stood up to get a drink and was shot and killed.[1595]

1584 PW-006, Ex. P02797, PT. 6999, 7061 (7 February 2007). PW-005 and PW-006 who survived the killings give different accounts of when the shooting in the warehouse started. PW-006, Ex. P02797, PT. 6999, 7061 (7 February 2007); PW-005, Ex. P00261, PT. 7095, 7123 (8 February 2007).

1585 PW-005, T. 2210 (31 May 2010); PW-005, Ex. P00261, PT. 7095, 7123 (8 February 2007). Čelić heard hand grenade detonations and shooting coming from the direction of Kravica that was louder, stronger, and lasted for longer intervals than the shooting he heard coming from the forest and he believed that the prisoners were being shot at. Predrag Čelić, Ex. P01633, PT. 13478–13480 (28 June 2007).

1586 PW-006, Ex. P02797, PT. 7000 (7 February 2007).

1587 PW-005, Ex. P00261, PT. 7095 (8 February 2007).

1588 Zoran Petrović T. 14472–14473 (23 May 2011); Erin Gallagher, T. 6966 (28 October 2010); Milenko Pepić, Ex. P01628, PT. 13566 (9 July 2007).

1589 Milenko Pepić, Ex. P01628, PT. 13566–13567 (9 July 2007).

1590 Milenko Pepić, Ex. P01628, PT. 13577–13578 (9 July 2007).

1591 PW-006, Ex. P02797, PT. 7005 (7 February 2007).

1592 PW-005, Ex. P00261, PT. 7096–7097 (8 February 2007).

1593 PW-006, Ex. P02797, PT. 7005–7006 (7 February 2007); Adjudicated Fact 230.

1594 PW-006, Ex. P02797, PT. 7006 (7 February 2007).

1595 PW-005, Ex. P00261, PT. 7096 (8 February 2007).

363. On 13 July, Pepić passed by the warehouse on his way to Konjević Polje and saw large numbers of bullet holes on the outside of the warehouse.[1596] Pictures taken by the Prosecution during its investigation show bullet and grenade damage inside the warehouse as well as a grenade handle and unexploded grenade found outside the warehouse.[1597] There was also evidence of human hair and blood on the walls of the warehouse and a significant number of bullet strikes both internally and externally as well as material connected with grenades and human skeletal remains.[1598]

(ii) Arrangements for the Burial Operation

364. Sometime after 9:00 p.m. on 13 July, PW-064 received a phone call from the Bratunac municipality directing him to see Beara at the SDS Office.[1599] Beara, who was in Deronjić's office, with another two officers, asked PW-064 about the availability of machinery and manpower of a public utility company in Bratunac, and said that they should be sent to the Milići municipality to bury the bodies of many people who were to die.[1600] At around the same time, PW-066 was also called to the SDS Office,[1601] where Deronjić, Civilian Commissioner for the Serbian Municipality of Srebrenica at the time,[1602] was present together with two unknown officers in camouflage uniforms.[1603] Deronjić said that many detainees in Kravica Warehouse had been killed and that they had to be buried.[1604] They reached the agreement that members of the Bratunac Civilian Protection Unit were to be sent to Kravica the next morning to load the corpses so that they could be transported to a bauxite mine in Rupovo Brdo, Milići, while the two officers would procure vehicles for the transportation.[1605]

1596 Ex. P01631; Milenko Pepić, Ex. P01628, PT 13573–13574 (9 July 2007).

1597 Jean-René Ruez, T. 971–974 (29 March 2010); Ex. P00094, pp. 98–103. *See also* Ex. P02591, pp. 7–11; Adjudicated Fact 235.

1598 Dean Manning, Ex. P01819, PT. 18979–18980 (10 December 2007).

1599 PW-064, Ex. P01031, PT. 9362, 9366, 9370 (23 March 2007), PT. 9434, 9449, 9459–9460 (26 March 2007); PW-064, T. 13431 (28 April 2011). In addition, two members of the MP were sitting in the office of the secretary. PW-064, Ex. P01031, PT. 9365 (23 March 2007), PT. 9459–9460 (26 March 2007); PW-064, T. 13431 (28 April 2011). Deronjić was not present in his office on this occasion. PW-064, Ex. P01031, PT. 9433–9434 (26 March 2007).

1600 PW-064, Ex. P01031, PT. 9367–9369 (23 March 2007); PW-064, T. 13431 (28 April 2011).

1601 PW-066, Ex. P01738 (confidential), BT. 7873 (closed session) (20 April 2004).

1602 Miroslav Deronjić, Ex. P00020a, BT. 6137 (19 January 2004); Ex. P00023, p. 1; PW-066, Ex. P01738 (confidential), BT. 7869 (closed session) (20 April 2004); Adjudicated Fact 115.

1603 PW-066, Ex. P01738 (confidential), BT. 7873 (closed session) (20 April 2004). PW-066 could not tell whether they were in the VRS's olive-grey camouflage uniforms or the civilian police's blue camouflage uniforms. PW-066, Ex. P01734 (confidential), PT. 17908–17909 (closed session) (19 November 2007).

1604 PW-066, Ex. P01738 (confidential), BT. 7873 (closed session) (20 April 2004); PW-066, Ex. P01734 (confidential), PT. 17909 (closed session) (19 November 2007).

1605 PW-066, Ex. P01738 (confidential), BT. 7873–7874, 7888 (closed session) (20 April 2004). The RS government established civilian protection units on the national, regional, and municipal levels. PW-066, Ex. P01738 (confidential), BT. 7863 (closed session) (20 April 2004). At the municipal level, the commander of the Civilian Protection Unit was the president of the Bratunac Municipal Executive Board, who could issue orders to the Civilian Protection Unit. PW-066, Ex. P01738 (confidential), BT. 7863–7864, 7875 (closed session)

365. Around 1:00 or 1:30 a.m. on 14 July 1995, PW-064 received a second phone call to get further instructions at the SDS Office, where Beara ordered him to accompany a military policeman to find a burial location for the bodies.[1606] At around the same time, PW-066 was called again to report to the SDS Office to meet Deronjić, Momir Nikolić and the two officers he met earlier, who told him the director of the bauxite mine opposed burial there and that members of the Bratunac Civilian Protection service should instead carry out the burial the next morning in Glogova.[1607]

366. Around 9:30 a.m. on the morning of 14 July 1995, PW-063 received a call to report to the SDS Office, where Beara[1608] and two officers in uniform were present.[1609] The two officers inquired about the availability of construction equipment within the Bratunac municipality, and it was agreed that a ULT machine belonging to the local brick company would be at their disposal.[1610]

(iii) Burial at Ravnice

367. Some bodies from Kravica Warehouse were dumped down the side of an embankment off the Hodžići road, known collectively as Ravnice 1 and 2.[1611] Material from the warehouse was

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(20 April 2004). An employee of the Ministry of Defence functioned as chief of staff of the civilian protection unit, and there were also staff members for tasks such as sanitisation or "asanacija", medical aid, veterinarian protection, fire fighting, as well as a workers' obligation unit, which was attached to the Bratunac municipal services and engaged full time throughout the war in various logistical tasks. PW-066, Ex. P01738 (confidential), BT. 7863–7864 (closed session) (20 April 2004). The workers' obligation unit had a tractor, a Lada vehicle, a funeral hearse, and additional power tools. PW-066, Ex. P01738 (confidential), BT. 7866 (closed session) (20 April 2004). The "asanacija" or sanitisation unit was attached to the Rad utilities communal enterprise and was responsible for transporting wounded soldiers from different hospitals to and from Serbia and for burying the bodies of those killed in individual and mass graves. PW-066, Ex. P01738 (confidential), BT. 7864–7865 (closed session) (20 April 2004). For these purposes, the "asanacija" unit had a tractor, a FAP heavy-duty vehicle, a small Skip for digging, and a refuse disposal vehicle. PW-066, Ex. P01738 (confidential), BT. 7866 (closed session) (20 April 2004). The "asanacija" unit could also request that the Ministry of Defence mobilise equipment, such as an ULT, which was owned by a state-owned enterprise. PW-066, Ex. P01738 (confidential), BT. 7867 (closed session) (20 April 2004). Dragan Mirković, the commander of the "asanacija" unit, was also the head of the utilities company and a member of the civilian protection staff. PW-066, Ex. P01738 (confidential), BT. 7866 (closed session) (20 April 2004).

1606 PW-064, Ex. P01031, PT. 9369–9370 (23 March 2007); PW-064, T. 13432 (28 April 2011).

1607 PW-066, Ex. P01738 (confidential), BT. 7876–7877 (closed session) (20 April 2004).

1608 The Chamber notes that Deronjić stated that on the morning of 14 July he learnt that Beara was looking for the brick factory in order to put some prisoners there. Miroslav Deronjić, Ex. P00020a, BT. 6275 (20 January 2004). *See also supra* para. 257.

1609 PW-063, Ex. P00867, PT. 9230–9231 (22 March 2007). While Beara was sitting in the first office, the two officers were sitting in the second office, to which Beara directed PW-063 upon his arrival. PW-063 did not know the two officers, but thought that they were a colonel and a lieutenant-colonel. PW-063 stated that they were not members of the Bratunac Brigade. PW-063, Ex. P00867, PT. 9231, 9233–9234 (22 March 2007).

1610 PW-063, Ex. P00867, PT. 9232 (22 March 2007) (stating that a ULT machine is a construction machine). PW-063 assumed that the machinery was needed for "what had happened in Kravica." PW-063, Ex. P00867, PT. 9236, 9238 (22 March 2007). In the *Popović et al.* case, PW-063 stated that while giving a prior statement to the Prosecution, he did not mention the use of equipment for burials or the meetings involving Beara on 14 July 1995 because he was not asked about this specifically or perhaps did not understand the investigator's question at the time. PW-063, Ex. P00867, PT. 9253–9256 (22 March 2007); Ex. P00868, pp. 14–15. Considering the totality of PW-063's testimony from prior cases and in this case, as well as his explanation for why he did not discuss the topic with the investigator, the Chamber is satisfied that PW-063's evidence on the matter is consistent and that the meetings discussing the outlined subject-matter did take place on 14 July 1995.

1611 Dean Manning, T. 10169–10170, 10192, 10199–10200 (22 February 2011); Dean Manning, Ex. P01819, PT. 19111–19112 (12 December 2007).

found commingled with the bodies in Ravnice, showing a direct physical link to Kravica Warehouse.[1612] Additionally, two identification documents were found in Kravica Warehouse for two individuals who were identified by DNA analysis in Ravnice 2.[1613] Most of the victims recovered from the Ravnice gravesites died from gunshot injuries to the head or trunk.[1614] At least 14 of these individuals were 17 years old or under.[1615] There is no evidence that Ravnice has been disturbed.[1616]

368. As of February 2010, DNA-based analysis led to the identification of 31 Srebrenica-related victims at Ravnice 1 and 172 at Ravnice 2.[1617]

(iv) Burial at Glogova and Reburial at Zeleni Jadar, Budak, and Blječeva

369. On the morning of 14 July staff of the Bratunac Civilian Protection Unit went to Glogova to dig a grave.[1618] Other bodies from Kravica Warehouse were taken in truckloads to gravesites at Glogova.[1619] The RAD Utilities Company, the Civilian Protection service, and members of the Engineering Company of the Zvornik Brigade participated in the burials at Glogova.[1620] Work was carried out on the Glogova gravesite for a few days.[1621]

370. Two large primary gravesites located six kilometres east of Kravica and seven kilometres west of Bratunac, were labelled Glogova 1 and 2 during exhumations and each was found to comprise several sub-graves.[1622] Material from Kravica Warehouse was commingled with the bodies in Glogova 1 and 2, showing a direct physical link between the warehouse and the gravesites.[1623] Forensic evidence shows that most individuals exhumed from the Glogova gravesites

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1612 Dean Manning, T. 10169–10170 (22 February 2011).
1613 Ex. P00170, p. 13.
1614 Ex. P00896. p. 25; Ex P00919, pp. 6–11.
1615 Ex. P00919, p. 11.
1616 Dean Manning, T. 10170–10171, 10199–10200 (22 February 2011).
1617 Ex. P00170, pp. 13–14.
1618 PW-066, Ex. P01738 (confidential), BT. 7879 (closed session) (20 April 2004).
1619 Ostoja Stanojević, Ex. P01697, BT. 5688–5691 (4 December 2003); Adjudicated Fact 232. RAD Utilities personnel worked on the collection of bodies that were taken to the Glogova gravesites for two or three days. PW-064, T. 13433–13435 (28 April 2011).
1620 PW-064, Ex. P01031, PT. 9371–9372 (23 March 2007), PT. 9391 (26 March 2007); PW-066, Ex. P01738 (confidential), BT. 7879 (closed session) (20 April 2004); Adjudicated Fact 234.
1621 PW-064, T. 13439, 13463 (28 April 2011); PW-064, Ex. P01031, PT. 9391 (26 March 2007); PW-066, Ex. P01738 (confidential), BT. 7912 (closed session) (20 April 2004).
1622 Jean-René Ruez, T. 1046 (30 March 2010); Dean Manning, Ex. P01819, PT. 19113 (12 December 2007); Ex. P00873, pp. 4–6; Ex. P01834; Ex. P00919, p. 12; PW-064, T. 13433–13435 (28 April 2011); Ex. P02194 (aerial photograph of Glogova dated 17 July on which PW-064 indicated where the graves were dug).
1623 Dean Manning, T. 10170 (22 February 2011); Dean Manning, Ex. P01819, PT. 18980 (10 December 2007); Michael Hedley, T. 17575–17577, 17580, 17590–17596 (5 September 2011); Ex. P02591, pp. 13–21; Ex. P02592; Richard Wright, Ex. P00869, PT. 7440–7441 (20 February 2007), PT. 7474–7475 (21 February 2007); Ex. P00873, pp. 19–20, 38; Ex. P00937, p. 13; Adjudicated Fact 381.

had suffered gunshot injuries.[1624] Pieces of grenade and shrapnel were found in the grave.[1625] However, a significant number of those buried at Glogova were not killed at Kravica Warehouse: some were taken from Bratunac town, in particular from near the Vuk Karadžić School; others from the Bratunac–Konjević Polje road; and there were others who had been captured by the authorities in Serbia and returned to the RS.[1626] It follows, therefore, that not all of those reburied in the secondary graves related to Glogova were killed at Kravica Warehouse. PW-064 believed that most of the people buried in Glogova were killed in Kravica because vehicles that transported these bodies came from the direction of Kravica,[1627] but he was at the site only for limited periods of time.[1628]

371. As of February 2010, DNA-based analysis led to the identification of 224 Srebrenica-related victims at Glogova 1 and 169 at Glogova 2, totalling 393 Srebrenica-related victims from Glogova 1 and 2.[1629]

372. Sometime in September 1995 the VRS Main Staff initiated an operation to transport away bodies initially buried at Glogova 1 and 2 from the site and rebury them elsewhere.[1630] The Chamber, therefore, now turns to the forensic evidence which establishes a link between the primary Glogova graves discussed above and secondary gravesites at Zeleni Jadar, Budak, and Blječeva.

373. Like the Glogova graves, material from Kravica Warehouse was found within gravesites known as the Zeleni Jadar 5 and 6 gravesites, showing a direct physical link to the warehouse.[1631] There are also DNA-based connections between the two Glogova gravesites and Zeleni Jadar 5 and 6.[1632] Moreover, DNA based connections have also been found between the two Glogova gravesites and other gravesites, namely those known as Zeleni Jadar 1A, 1B, 2, 3, and 4; Budak 1 and 2; and Blječeva 1, 2, and 3.[1633]

1624 Ex. P00919, p. 22. There were blast injuries in over a third of the bodies in Glogova 1. Ex. P00919, p. 13; Adjudicated Facts 379.

1625 Ex. P00873, p. 17; Adjudicated Fact 382.

1626 Jean-René Ruez, T. 1045 (30 March 2010); Dušan Janc, T. 1827–1828 (14 May 2010); PW-064, T. 13438–13439, 13442–13447 (28 April 2011); PW-064, Ex. P01031, PT. 9372 (23 March 2007), PT. 9388–9391 (26 March 2007).

1627 PW-064, Ex. P01031, PT. 9392–9393 (26 March 2007).

1628 PW-064, T. 13439 (28 April 2011).

1629 Ex. P00170, pp. 11–12.

1630 *See infra* paras. 558–565.

1631 Dean Manning, T. 10170 (22 February 2011); Richard Wright, Ex. P00869, PT. 7440 (20 February 2007); Christopher Lawrence, Ex. P00920, PT. 7537 (21 February 2007); Dean Manning, Ex. P01819, PT. 18980 (10 December 2007); Adjudicated Fact 374.

1632 Ex. P00170, pp. 48–49. Specifically there are 13 individuals with remains in both Glogova 1 and Zeleni Jadar 5; 3 with remains in both Glogova 1 and Zeleni Jadar 6, and 1 with remains in both Glogova 2 and Zeleni Jadar 5. *Ibid.*

1633 Ex. P00170, pp. 48–49. The DNA of a tooth recovered at Kravica Warehouse matched that of bones recovered from Zeleni Jadar 2. Ex. P00170, p. 27.

374. The Chamber, therefore, finds that bodies were taken from Glogova to the following secondary gravesites: Zeleni Jadar 1A, 1B, 2, 3, 4, 5 and 6; as well as Budak 1 and 2; and Blječeva 1, 2, and 3.[1634]

375. As of February 2010, DNA analysis led to the identification of 22 Srebrenica-related victims at Zeleni Jadar 1A; 22 at Zeleni Jadar 1B; 19 at Zeleni Jadar 2; 30 at Zeleni Jadar 3; 64 at Zeleni Jadar 4; 164 at Zeleni Jadar 5; 120 at Zeleni Jadar 6; 53 at Budak 1; 49 at Budak 2; 49 at Blječeva 1; 81 at Blječeva 2; and 65 at Blječeva 3, giving a total of 738 Srebrenica-related victims.[1635] Together with the 393 identified individuals from Glogova 1 and 2,[1636] the total number of Srebrenica-related victims recovered from Glogova and the associated secondary graves is 1,131 individuals.

(v) Conclusion

376. The Chamber finds that all the 203 Srebrenica-related victims exhumed from the Ravnice gravesites and a large but unknown proportion of the 1,131 Srebrenica-related victims exhumed from Glogova 1 and 2 and all related secondary gravesites were killed at Kravica Warehouse. While the Chamber considers PW-006's estimate of approximately 2,500–3,000 people in Kravica Warehouse to be excessive,[1637] it accepts Čelić's tentative assessment that the column of prisoners that went by foot from Sandići Meadow to the warehouse numbered between approximately 600 and 800[1638] and it notes that two busloads of prisoners went there as well.[1639] In conclusion, the Chamber finds beyond reasonable doubt that members of the Bosnian Serb Forces killed between 600–1,000 Bosnian Muslims at Kravica Warehouse on 13 and 14 July 1995.[1640]

(e) Kravica Supermarket[1641]

377. Sometime between 5:00 and 6:00 p.m. on 13 July, once the truck that PW-015 had been ordered to board became full with 119 Bosnian Muslims from the Nova Kasaba Football Field, it started to move in the direction of Konjević Polje.[1642] The truck turned right after the crossroads at

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1634 Adjudicated Fact 377.
1635 Ex. P00170, p. 40.
1636 *See supra* para. 371.
1637 PW-006, Ex. P02797, PT. 6990 (7 February 2007).
1638 Predrag Čelić, Ex. P01633, PT. 13477 (28 June 2007).
1639 PW-006, Ex. P02797, PT. 6978–6981 (6 February 2007).
1640 *See also* Adjudicated Fact 226. The Chamber reaches the figure of 600–1,000 by taking the lower number of the range given by Čelić and adding to that the two bus-loads of prisoners who arrived later.
1641 The Indictment alleges that during the night between 13 and 14 July Bosnian Serb Forces beat and summarily executed Bosnian Muslim men who had surrendered or been captured from the column or had been separated at Potočari and detained on trucks near Kravica Supermarket. Indictment, para. 22.3.
1642 PW-015, Ex. P00110, KT. 2954–2956 (14 April 2000); Adjudicated Fact 545. *See also supra* paras. 335–341.

Konjević Polje in the direction of Bratunac and it stopped near a supermarket in Kravica.[1643] This truck was accompanied by at least two more trucks.[1644] As dusk approached, members of the Bosnian Serb Forces in camouflage uniforms that were guarding the trucks started hitting the prisoners through the canvas with their rifle butts.[1645] They asked for people from specific villages around Srebrenica such as Glogova and Osmac, and PW-015 saw five prisoners removed from the truck after they identified themselves.[1646] These prisoners did not return.[1647]

378. The prisoners were thirsty and asking for water.[1648] A member of the Bosnian Serb Forces put the barrel of his gun in the mouth of a Bosnian Muslim prisoner and then cursed his "balija mother".[1649] Sometime later, the prisoners again started screaming, asking for water.[1650] They were drinking their own urine because of the extreme heat.[1651]

379. The Bosnian Muslim prisoners spent the night in the truck and during the night five people were taken off the truck one by one and did not return.[1652] Throughout the night PW-015 heard the screams, moaning, cries for help, and bursts of gunfire.[1653] PW-015 heard people shouting and asking not to be beaten or killed.[1654] The members of the Bosnian Serbs Forces stood guard around the trucks at all times.[1655]

380. The mistreatment of the prisoners continued on 14 July.[1656] The prisoners stayed in the trucks during the day and sometime between 2:00 and 3:00 p.m., the trucks travelled through Konjević Polje in the direction of Zvornik.[1657]

381. The Chamber notes that PW-015 is the only witness who gave evidence on the killings at Kravica Supermarket in this case. As previously stated, it is established in jurisprudence that the testimony of a single witness on a material fact does not require corroboration.[1658] PW-015's evidence was admitted into evidence pursuant to Rule 92 *bis*(C) and he was subject to cross-

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1643 PW-015, Ex. P00110, KT. 2956 (14 April 2000); Adjudicated Fact 545.
1644 PW-015, Ex. P00110, KT. 2956 (14 April 2000); PW-015, T. 1396–1397 (26 April 2010).
1645 PW-015, Ex. P00110, KT. 2957, 2960 (14 April 2000).
1646 PW-015, Ex. P00110, KT. 2957 (14 April 2000).
1647 PW-015, Ex. P00110, KT. 2957 (14 April 2000).
1648 PW-015, Ex. P00110, KT. 2960 (14 April 2000).
1649 PW-015, Ex. P00110, KT. 2960 (14 April 2000).
1650 PW-015, Ex. P00110, KT. 2961 (14 April 2000).
1651 PW-015, Ex. P00110, KT. 2961 (14 April 2000).
1652 PW-015, Ex. P00110, KT. 2957, 2999 (14 April 2000).
1653 PW-015, Ex. P00110, KT. 2957 (14 April 2000).
1654 PW-015, Ex. P00110, KT. 2957 (14 April 2000).
1655 PW-015, Ex. P00110, KT. 2999 (14 April 2000).
1656 PW-015, Ex. P00110, KT. 2961 (14 April 2000).
1657 PW-015, Ex. P00110, KT. 2961–2962 (14 April 2000). PW-015 saw another truck with two members of the Bosnian Serb Forces with rifles sitting in the cabin following the truck he was in. The prisoners had been told earlier in Kravica that if any of them tried to jump out of the truck, ten of them would be killed. PW-015, Ex. P00110, KT. 2962 (14 April 2000).

examination by the Accused. The Chamber observed the witness's demeanour and character in court. No inconsistencies were found between his prior testimony in *Krstić* and in this case. Having carefully evaluated and weighed his evidence, the Chamber finds that during the night between 13 July and 14 July, members of the Bosnian Serb Forces beat and executed at least five Bosnian Muslim men detained on trucks near Kravica Supermarket.

(f) Bratunac Town (12–14 July)

(i) Detentions

382. During 12 and 13 July 1995, Bosnian Muslim men who had been separated at Potočari were transported to Bratunac;[1659] and on 13 July 1995, large numbers of other Bosnian Muslim men from the column who had surrendered or been captured were also transported from detention sites along the Milići–Konjević Polje–Bratunac road to Bratunac, where they were detained with the prisoners who had been transferred from Potočari.[1660]

383. All of these Bosnian Muslim prisoners who were taken to Bratunac were detained inside buildings and vehicles that were parked throughout the town.[1661] Some prisoners were detained inside the buildings comprising the Vuk Karadžić School complex:[1662] the Vuk Karadžić School itself,[1663] a building located behind the school referred to as a hangar or warehouse,[1664] and a building nearby known as the old school or technical school.[1665] In addition, by the evening of 13 July, Bratunac town was filled with a large number of buses and trucks packed with prisoners[1666] and parked in several locations including outside the Vihor Company garages;[1667] in front and to the

1658 *See supra* n. 1538.
1659 *See supra* para. 293.
1660 *See supra* para. 327.
1661 PW-075, Ex. P02065 (confidential), PT. 3833 (private session) (8 November 2006); Jean-René Ruez, T. 980–981 (29 March 2010); Ex. P00094, p. 123; Tomasz Blaszczyk, T. 3765–3766 (9 July 2010); Adjudicated Facts 565–568.
1662 PW-066, Ex. P01738 (confidential), BT. 7916 (closed session) (20 April 2004); PW-066, Ex. P01734 (confidential), PT. 17867–17868 (closed session) (19 November 2007). *See also* Ex. P00094, p. 124.
1663 PW-075, Ex. P02065 (confidential), PT. 3833 (private session) (8 November 2006); Mile Janjić, Ex. P01096, BT. 9805–9806 (24 May 2004); Mile Janjić, Ex. P01094, PT. 17930–17931, 17934 (20 November 2007); PW-073, T. 622 (12 March 2010); PW-063, Ex. P00867, PT. 9218 (22 March 2007); Ex. P01045; PW-073, Ex. P00048 (confidential), pp. 9–11. *See also* Tomasz Blaszczyk, T. 3765 (9 July 2010); Jean-René Ruez, T. 981–982 (29 March 2010); Ex. P00094, p. 125.
1664 PW-075, Ex. P02065 (confidential), PT. 3833 (private session) (8 November 2006); PW-023, Ex. P00060, PT. 17315–17316, 17318, 17330 (1 November 2007), PT. 17379 (2 November 2007). *See also* Tomasz Blaszczyk, T. 3765 (9 July 2010); Jean-René Ruez, T. 918, 981–982 (29 March 2010); Ex. P00094, pp. 15, 17, 124–125.
1665 PW-075, Ex. P02065 (confidential), PT. 3833 (private session) (8 November 2006); Ex. P00050; Ex. P01045. *See also* Tomasz Blaszczyk, T. 3765 (9 July 2010); Jean-René Ruez, T. 918, 981–982 (29 March 2010); Ex. P00094, pp. 15, 124–125.
1666 Zlatan Čelanović, Ex. P00637, PT. 6638 (31 January 2007); Momir Nikolić, T. 12638 (12 April 2011); Mile Janjić, Ex. P01096, BT. 9809 (24 May 2004). *See also* Jean-René Ruez, T. 982 (29 March 2010); Ex. P00094, p. 125.
1667 PW-007, T. 528 (11 March 2010); Ex. P01044.

side of the Bratunac municipal building;[1668] in front of and inside the Bratunac Stadium;[1669] and around the Vuk Karadžić School complex.[1670] The Bratunac Brigade, with the assistance of its military police, was tasked with securing the prisoners housed inside the schools and in the vehicles within Bratunac.[1671]

a. Bosnian Muslims Transported from Potočari

384. Bosnian Muslims who were transported from Potočari on 12 July were detained in the Vuk Karadžić School complex and guarded by members of the Bosnian Serb Forces.[1672] As prisoners arrived at the complex, some were forced to leave their belongings outside before entering the school buildings and they were not allowed to retrieve them.[1673] Others who had been allowed to take their personal belongings into the school buildings later had these possessions confiscated by members of the Bosnian Serb Forces.[1674]

385. During their detention inside the school buildings, the prisoners were not provided with food or medical treatment[1675] and were given inadequate amounts of water.[1676] Several prisoners were beaten by members of the Bosnian Serb Forces including members of the MP of the Bratunac Brigade[1677] inside and outside of the school.[1678] Beginning as early as the evening of 13 July, prisoners detained inside the school complex were bused to Orahovac.[1679]

1668 Mile Janjić, Ex. P01096, BT. 9809 (24 May 2004); PW-064, T. 13437, 13462 (28 April 2011); PW-064, Ex. P01031, PT. 9494, 9513 (27 March 2007); PW-063, T. 6544–6545 (19 October 2010); PW-063, Ex. P00866 (confidential), PT. 9212–9813 (private session) (22 March 2007); PW-063, Ex. P00867, PT. 9213, 9215 (22 March 2007).

1669 Zlatan Čelanović, Ex. P00637, PT. 6641–6643, 6652 (31 January 2007); Ex. P00653; PW-063, T. 6544–6545 (19 October 2010); PW-063, Ex. P00867, PT. 9215 (22 March 2007).

1670 PW-016, Ex. P01762, KT. 3027–3028 (14 April 2000); PW-003, Ex. P01509, BT. 6093, 6096 (17 December 2003); Mevludin Orić, Ex. P00069, PT. 908 (28 August 2006); Mile Janjić, Ex. P01096, BT. 9809–9810 (24 May 2004); PW-063, T. 6544–6545 (19 October 2010); PW-063, Ex. P00867, PT. 9215 (22 March 2007); Zlatan Čelanović, Ex. P00637, PT. 6638–6639, 6690–6694 (31 January 2007). Although Čelanović referred to the school as the Branko Radičević School, the Chamber finds the name of the school had changed after the war and Čelanović was using the new name. *See* PW-066, Ex. P01738 (confidential), BT. 7916 (closed session) (20 April 2004); *See also supra* n. 1519.

1671 PW-075, Ex. P02065 (confidential), PT. 3834–3836 (private session) (8 November 2006). PW-075 clarified that the military police unit was not responsible for standing guard over the prisoners which was the duty of a military unit, but instead was responsible for protecting the Bosnian Muslim prisoners from the Bosnian Serb civilian population. PW-075, Ex. P02065 (confidential), PT. 3907–3908 (private session) (9 November 2006).

1672 PW-073, T. 622 (12 March 2010); PW-073, Ex. P00048 (confidential), pp. 9–12, 82; Zlatan Čelanović, Ex. P00637, PT. 6653, 6690 (31 January 2007); PW-023, Ex. P00060, PT. 17315–17316, 17318–17319, 17327–17330 (1 November 2007), PT. 17379 (2 November 2007). *See also* Adjudicated Fact 570.

1673 PW-073, Ex. P00048 (confidential), pp. 10–11, 81.

1674 PW-023, Ex. P00060, PT. 17326 (1 November 2007).

1675 PW-073, Ex. P00048 (confidential), p. 20.

1676 PW-073, Ex. P00048 (confidential), p. 20; PW-023, Ex. P00060, PT. 17319 (1 November 2007). *See also* Adjudicated Fact 567.

1677 Mile Janjić, Ex. P01096, BT. 9804, 9807 (24 May 2004).

1678 PW-073, Ex. P00048 (confidential), pp. 11, 19–20; PW-023, Ex. P00060, PT. 17320–17321 (1 November 2007).

1679 PW-023, Ex. P00060, PT. 17327–17328 (1 November 2007).

b. Bosnian Muslims Transported from Various Detention Sites along the Bratunac–Konjević Polje–Milići Road

386. Bosnian Muslim prisoners transported from Sandići Meadow in civilian trailer trucks on 13 July were detained outside the Vihor Company Garages.[1680] They were detained there overnight in cramped conditions without adequate water.[1681]

387. Other Bosnian Muslim prisoners who had been detained in Nova Kasaba[1682] and the building at the Konjević Polje intersection[1683] were bussed to the Vuk Karadžić School complex[1684] where they were told by members of the MP of the Bratunac Brigade guarding them that they were to remain on the buses there overnight because there was no more room left in the school.[1685] They remained on the buses parked around the Vuk Karadžić School complex during the night of 13-14 July and were also guarded by VRS soldiers.[1686] They were not provided with water and some fainted because of the heat.[1687]

388. Several of the VRS and local civilian authorities present in Bratunac town during this period expressed concern about the large number of detainees and the safety of both guards and detainees.[1688] Bosnian Muslim detainees had been placed in the school that had been used for detention during 1992, when many Bosnian Muslims had been killed.[1689] The repetition of such detention could potentially have created an impression that similar activities would be

1680 PW-007, T. 528–529 (11 March 2010); PW-008, Ex. P01450, BT. 1397–1399 (21 July 2003); PW-008, Ex. P01449, PT. 3368–3371 (31 October 2006). Although PW-008 did not know of his location during his detention in Bratunac, the Chamber notes the similarities between PW-008's transportation from Sandići Meadow, detention in Bratunac, and departure from Bratunac with those of PW-007 who testified that he was told by another prisoner that they were being held outside of "Vihor's garages". The Chamber therefore finds that PW-008 was among those prisoners detained in trucks outside the Vihor Company garages.

1681 PW-007, T. 531–532 (11 March 2010); PW-008, Ex. P01450, BT. 1399 (21 July 2003).

1682 PW-016, Ex. P01762, KT. 3027 (14 April 2000). *See also* Tomasz Blaszczyk, T. 3765–3766 (9 July 2010).

1683 Mevludin Orić, Ex. P00069, PT. 897–898, 908–909 (28 August 2006).

1684 PW-075, Ex. P02065 (confidential), PT. 3833 (private session) (8 November 2006).

1685 Mevludin Orić, Ex. P00069, 908–909 (28 August 2006); PW-003, Ex. P01509, BT. 6093, 6096 (17 December 2003). *See also* Mile Janjić, Ex. P01096, BT. 9807–9810 (24 May 2004) (stating that members of the MP of the Bratunac Brigade were tasked with guarding the buses parked around the Vuk Karadžić School complex).

1686 Mevludin Orić, Ex. P00069, PT. 908–910 (28 August 2006); PW-016, Ex. P01762, KT. 3027–3029 (14 April 2000).

1687 PW-016, Ex. P01762, KT. 3030 (14 April 2000). There was at least one instance of a prisoner being beaten with a rifle butt. Mevludin Orić, Ex. P00069, PT. 914 (28 August 2006).

1688 *See, e.g.*, Zlatan Čelanović, Ex. P00637, PT. 6639–6640, 6650 (31 January 2007); Zlatan Čelanović, T. 3610 (7 July 2010) (expressing fear of the large number of prisoners and relatively small number of guards); Momir Nikolić, T. 12388 (6 April 2011) (describing how the buses carrying Bosnian Muslim detainees were stoned as they passed through Bratunac); Miroslav Deronjić, Ex. P00020a, BT. 6437 (22 January 2004) (referring to safety concerns in Bratunac town); PW-064, Ex. P01030 (confidential), PT. 9554 (private session) (27 March 2007) (referring to concerns about the situation in and around Bratunac).

1689 PW-063, Ex. P00867, PT. 9248, 9272–9273 (22 March 2007); Momir Nikolić, T. 12398–12399 (6 April 2011).

condoned.[1690] A member of the Bosnian Serb Forces who was present at the time agreed that there was an atmosphere of hate in Bratunac town during this period.[1691]

(ii) Bosnian Muslim Men Taken from the Hangar[1692]

389. During the night of 12 July 1995, soldiers approached the Bosnian Muslim detainees in the hangar behind Vuk Karadžić School asking for people from certain villages such as Glogova to identify themselves.[1693] The soldiers pointed torches at those who identified themselves, told them they would not need bags anymore, and took them outside.[1694] After these detainees were taken outside, PW-023, one of the other detainees, heard the sound of blunt blows, moaning, and screaming, followed by comments such as "[a]ll right, he's finished. Just drag him off over there".[1695] The soldiers then came back inside and picked more detainees to be taken outside.[1696] The following day this process continued and PW-023 observed that the soldiers appeared to pick fit-looking men rather than the infirm.[1697] Two additional prisoners—Ibran Mustafić and Hamed Efendić—had been brought to the hangar that night.[1698] Ibran Mustafić was taken outside and afterwards the sounds of a quarrel and shouting were heard; however, he survived.[1699] Hamed Efendić was taken outside, but afterwards there was a sound of shooting and then a comment such as, "[y]ou can drag him away. He's finished. He's dead. Drag him off".[1700]

390. In total, approximately 40 people were taken outside during the night of 12 July 1995 and none of them returned.[1701] A few prisoners were beaten and their injuries were shown to the other detainees.[1702] By the morning of 13 July 1995, five detainees had died and other detainees took their bodies outside.[1703] When they returned they told PW-023 that there was a pile of dead[1704] behind the hangar.[1705]

1690 *See, e.g.*, Momir Nikolić, T. 12398 (6 April 2011).
1691 Zlatan Čelanović, T. 3648–3649 (7 July 2010).
1692 The Indictment alleges that on 12 July, beginning at 10:00 p.m. and continuing through 13 July, more than 50 Bosnian Muslim men were taken from a hangar behind the Vuk Karadžić School and summarily executed. Indictment, para. 22.2(a).
1693 PW-023, Ex. P00060, PT. 17318–17319 (1 November 2007).
1694 PW-023, Ex. P00060, PT. 17319–17320 (1 November 2007).
1695 PW-023, Ex. P00060, PT. 17320 (1 November 2007).
1696 PW-023, Ex. P00060, PT. 17320 (1 November 2007).
1697 PW-023, Ex. P00060, PT. 17320 (1 November 2007).
1698 PW-023, Ex. P00060, PT. 17321 (1 November 2007).
1699 PW-023, Ex. P00060, PT. 17321 (1 November 2007), PT. 17385–17387 (2 November 2007).
1700 PW-023, Ex. P00060, PT. 17321 (1 November 2007), PT. 17388 (2 November 2007); PW-023, T. 748 (22 March 2010). PW-023 believes this was the only shooting on the night of 12 July. PW-023, Ex. P00060, PT. 17321 (1 November 2007).
1701 PW-023, Ex. P00060, PT. 17320 (1 November 2007), PT. 17385, 17388, 17389 (2 November 2007).
1702 PW-023, Ex. P00060, PT. 17320–17321 (1 November 2007).
1703 PW-023, Ex. P00060, PT. 17320–17322 (1 November 2007). *See also* Adjudicated Fact 573.
1704 *See* Annex C: Confidential Annex.
1705 PW-023, Ex. P00060, PT. 17322 (1 November 2007).

391. During the morning of 13 July 1995, soldiers chose a group of ten detainees from the hangar and took them outside to do something in relation to trucks and buses which had just arrived.[1706] The trucks or buses could then be heard leaving and these ten detainees never returned.[1707] This pattern was repeated in the afternoon when a further ten were taken away.[1708] Throughout the day, soldiers also ordered individual detainees outside and afterwards PW-023 would hear a blow and the sound of someone falling, and that person would not come back to the hangar.[1709]

392. PW-023 was allowed to use the bathroom and while returning from the bathroom saw a man who was taken out of a group waiting for the toilets and had to walk between two lines of soldiers until one of the soldiers hit him in the head and/or torso with an iron bar, causing him to fall forwards on his stomach.[1710] Another soldier hit the man in the back with an axe so hard that the soldier struggled to get the axe out of his back.[1711] The man did not scream or make a sound.[1712] Aside from the two groups of ten men, PW-023 estimates that 40 detainees went missing from the hangar on 13 July 1995.[1713]

393. Although the Chamber acknowledges that some of the detainees taken outside may have survived, it nonetheless finds that VRS soldiers killed many of the detainees that had been taken from the hangar behind Vuk Karadžić School on 12 and 13 July 1995.

(iii) Bosnian Muslim Men Taken from the Trailer of a Truck in Bratunac Town[1714]

394. During the night of 13 July, VRS soldiers began asking the Bosnian Muslims detained in a trailer of a truck parked near "Vihor garages" for people from the villages surrounding Srebrenica.[1715] If anyone answered, the VRS soldiers would lead that person away, after which PW-007 who was detained in the truck would hear a strong thud, cries, a gun shot, and then silence.[1716] This went on for the entire night, and none of those who were led away returned.[1717] In the morning

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1706 PW-023, Ex. P00060, PT. 17322 (1 November 2007).
1707 PW-023, Ex. P00060, PT. 17322 (1 November 2007).
1708 PW-023, Ex. P00060, PT. 17323 (1 November 2007).
1709 PW-023, Ex. P00060, PT. 17322–17323 (1 November 2007).
1710 PW-023, Ex. P00060, PT. 17323 (1 November 2007), PT. 17387 (2 November 2007).
1711 PW-023, Ex. P00060, PT. 17323 (1 November 2007), PT. 17387 (2 November 2007).
1712 PW-023, Ex. P00060, PT. 17323 (1 November 2007).
1713 PW-023, Ex. P00060, PT. 17324 (1 November 2007).
1714 The Indictment alleges that on 13 July, at approximately 9:30 p.m., two Bosnian Muslim men were taken off a truck in Bratunac town, taken to a nearby garage, and summarily executed. Indictment, para. 22.2(b).
1715 PW-007, T. 528–529 (11 March 2010). "Vihor garages" likely refers to the garages associated with the Vihor Transportation Company which was located in Bratunac. Richard Butler, T. 17207 (24 August 2011); Jean-René Ruez, T. 982 (29 March 2010); Ex. P00094, pp. 123, 125.
1716 PW-007, T. 530 (11 March 2010).
1717 PW-007, T. 530 (11 March 2010).

of 14 July, PW-007 heard the Bosnian Serb soldiers yelling "[d]on't allow civilians to go up to that street".[1718]

395. The Chamber finds that VRS soldiers killed a number of Bosnian Muslim detainees from the trailer of a truck in Bratunac town on the night of 13 July. The Chamber notes that while it finds that detainees from the truck were killed by the VRS, there was no evidence of the specific incident listed in paragraph 22.2(b) of the Indictment.

(iv) "Mentally Retarded" Bosnian Muslim Man Taken from a Bus in front of Vuk Karadžić School

396. During the night of 13 July, a detainee on a bus parked in front of Vuk Karadžić School who other detainees said was "not entirely normal" and "crazy" fell asleep despite orders not to do so.[1719] A military policeman got on the bus and punched the sleeping man in the shoulder.[1720] The man hit the military policeman back.[1721] Two or three military policemen dragged the detainee off the bus towards the Vuk Karadžić School.[1722] Mevludin Orić who was on the bus then heard a short burst of fire and the faint scream of the detainee, followed by somebody saying "drag him into the school".[1723]

397. The Chamber finds that members of the Bosnian Serb Forces killed this man on the night of 13 July 1995.

(v) Bosnian Muslim Men Otherwise Taken from Inside and Outside Vuk Karadžić School[1724]

398. During the day and night of 13 July, soldiers in camouflage uniforms took six or seven Bosnian Muslim men from a room inside Vuk Karadžić School in which approximately 150–200 Bosnian Muslims were being detained.[1725] PW-073, one of the detainees in the school, then heard moans and screaming, followed by bursts of machine gun fire which silenced the screams and those who had been taken away did not return.[1726] PW-073 also witnessed a "policeman" wearing a blue

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1718 PW-007, T. 530 (11 March 2010).
1719 Mevludin Orić, Ex. P00069, PT. 911 (28 August 2006), PT. 1072 (30 August 2006).
1720 Mevludin Orić, Ex. P00069, PT. 911 (28 August 2006).
1721 Mevludin Orić, Ex. P00069, PT. 911–912 (28 August 2006), PT. 1071–1072 (30 August 2006).
1722 Mevludin Orić, Ex. P00069, PT. 911–913 (28 August 2006), PT. 1072 (30 August 2006).
1723 Mevludin Orić, Ex. P00069, PT. 913 (28 August 2006), PT. 1072 (30 August 2006). The military policemen, as well as several other troops nearby, had their backs to Mevludin Orić; he therefore could not say who had fired the shots though it came from that group. Mevludin Orić, Ex. P00069, PT. 913–914 (28 August 2006).
1724 The Indictment alleges that between the evening of 13 July and the morning of 15 July, Bosnian Muslim males were continuously killed, both inside and outside the Vuk Karadžić School, by VRS and/or MUP personnel. Indictment, para. 22.2(d).
1725 PW-073, Ex. P00048 (confidential), pp. 10–12, 18–19, 53.
1726 PW-073, Ex. P00048 (confidential), pp. 17–19, 53–54.

uniform and a white belt kicking and beating a detainee, first with a hose and then with a rifle.[1727] The beaten detainee initially remained with the other detainees but was later taken outside and did not return.[1728] PW-073's evidence suggests that men were taken out of other rooms and killed outside.[1729]

399. During the night of 13 July, unknown individuals took four or five detainees off a bus parked outside Vuk Karadžić School and these detainees never returned.[1730] A Bosnian Serb named "Ilija"[1731] entered a bus and asked for people with certain names and then one detainee stood up and Ilija took him off the bus.[1732] Ilija also entered other buses and took detainees off, taking them to the school.[1733] Ilija also escorted several detainees from the courtyard near the school into the school itself.[1734] Two other men also assisted Ilija.[1735] None of the detainees were ever returned.[1736] During the night, Mevludin Orić heard screams and wailing from the school, usually after detainees were taken inside from a bus.[1737] Bursts of gunfire from the school were also heard throughout the night.[1738] In the night of 13 July Mile Janjić, a military policeman guarding the buses about 100–150 metres away from Vuk Karadžić School, heard shouting in which the detainees were called upon to resist.[1739] He then heard a volley of automatic gunfire coming from the school after which the shouting stopped.[1740]

400. Dragan Mirković, director of the Bratunac public utility company, and Ljupko Ilić of the Bratunac Civilian Protection Unit were involved in the collection and transportation of the bodies from the vicinity of Vuk Karadžić School to a mass grave at Glogova, starting on 14 July.[1741] While participating in this process, PW-064 saw five or six bodies in front of Vuk Karadžić School[1742] and on the morning of 14 July he was told by the driver responsible for transporting the bodies that

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1727 PW-073, Ex. P00048 (confidential), p. 11. PW-073 was unable to distinguish between military or civilian policemen. PW-073, Ex. P00048 (confidential), p. 12.
1728 PW-073, Ex. P00048 (confidential), p. 11.
1729 PW-073, Ex. P00048 (confidential), pp. 18, 53–54.
1730 PW-016, Ex. P01762, KT. 3029 (14 April 2000). *See also* Adjudicated Fact 571. PW-016 states that they did not dare look at who took the men and instead kept their heads bowed down. PW-016, Ex. P01762, KT. 3029 (14 April 2000).
1731 Mevludin Orić was able to identify this man from his physical appearance as "Ilija", a man of Serb ethnicity from Spat, whom he had known before the war. Mevludin Orić, Ex. P00069, PT. 917–918 (28 August 2006).
1732 Mevludin Orić, Ex. P00069, PT. 915 (28 August 2006). *See also* Adjudicated Fact 571.
1733 Mevludin Orić, Ex. P00069, PT. 915 (28 August 2006). *See also* Adjudicated Fact 571.
1734 Mevludin Orić, Ex. P00069, PT. 915–916 (28 August 2006).
1735 Mevludin Orić, Ex. P00069, PT. 916–917 (28 August 2006).
1736 Mevludin Orić, Ex. P00069, PT. 915, 917, 919 (28 August 2006).
1737 Mevludin Orić, Ex. P00069, PT. 918–919 (28 August 2006).
1738 Mevludin Orić, Ex. P00069, PT. 918–919 (28 August 2006); PW-016, Ex. P01762, KT. 3029 (14 April 2000).
1739 Mile Janjić, Ex. P01096, BT. 9756, 9809–9812 (24 May 2004); Mile Janjić, Ex. P01094, PT. 18002 (20 November 2007); Mile Janjić, T. 8852 (13 December 2010).
1740 Mile Janjić, Ex. P01096, BT. 9811–9812 (24 May 2004).
1741 PW-063, T. 6618–6619 (20 October 2010).

there were "a lot more" than that.[1743] PW-066 who also participated in this process personally saw between 40–60 bodies on the floor in a classroom inside Vuk Karadžić School.[1744] In total, PW-064 estimates that approximately one truck-load full of corpses was collected from the vicinity of Vuk Karadžić School over the course of 14 and 15 July 1995.[1745] These bodies were buried in a mass grave at Glogova on 16 July 1995.[1746]

401. Given the totality of the evidence,[1747] the Chamber finds that members of the Bosnian Serb Forces killed approximately 45–65 Bosnian Muslim detainees who were held inside and outside Vuk Karadžić School on 12–14 July 1995.

(g) Preparations Made on 13 and 14 July 1995 in Bratunac for the Killing Operation to Take Place in the Zvornik Area

402. Around 6:00 p.m. on 13 July 1995, upon instructions he received at the Bratunac Brigade Headquarters, Momir Nikolić met Beara in the centre of Bratunac town.[1748] Beara ordered Momir Nikolić to go to Zvornik to inform Drago Nikolić, Chief of Security of the Zvornik Brigade, that the Bosnian Muslims detained in Bratunac were to be transferred to Zvornik and Drago Nikolić was to secure the facilities in which they could be temporarily detained.[1749] Beara also said that the detainees would be killed after being detained in Zvornik.[1750]

403. Around midnight, Momir Nikolić returned from Zvornik and went to the Hotel Fontana in Bratunac, where he met Beara and informed him that he had transmitted Beara's order to Drago Nikolić at the Zvornik Brigade IKM.[1751] Beara and Nikolić then walked to the SDS Office as Beara

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1742 PW-064, Ex. P01031, PT. 9390–9391 (26 March 2007); PW-064, T. 13437–13438, 13446 (28 April 2011). PW-064 marked the exact location of the five or six bodies in Ex. P01045. PW-064, Ex. P01031, PT. 9390 (26 March 2007).

1743 PW-064, Ex. P01031, PT. 9391, 9431 (26 March 2007), PT. 9544 (27 March 2007); PW-064, T. 13438, 13446 (28 April 2011). PW-064 says he was never told of any bodies in Bratunac town aside from those at Vuk Karadžić School, although some bodies were also collected from outside Bratunac town itself. PW-064, T. 13453 (28 April 2011).

1744 PW-066, Ex. P01738 (confidential), BT. 7883, 7917 (closed session) (20 April 2004); PW-066, Ex. P01734 (confidential), PT. 17852 (closed session) (19 November 2007). *See also* Adjudicated Fact 575.

1745 PW-064, T. 13438–13440 (28 April 2011).

1746 PW-064, Ex. P01031, PT. 9538–9539 (27 March 2007); PW-064, T. 13438–13439 (28 April 2011).

1747 The Chamber acknowledges that some VRS witnesses present in the area during 12–14 July deny ever seeing or hearing about any alleged mistreatment or killings taking place at Vuk Karadžić School. *See, e.g.*, Mile Janjić, Ex. P01096, BT. 9852 (25 May 2004); Zlatan Čelanović, Ex. P00637, PT. 6674–6676 (31 January 2007); PW-075, Ex. P02065 (confidential), PT. 3834–3836 (private session) (8 November 2006). However, in view of the weight of the countervailing evidence, the Chamber is satisfied that the described events occurred in various locations in and around Vuk Karadžić School at various times. Moreover, it is likely that not every person in the area on those evenings would see or hear evidence of the killings.

1748 Momir Nikolić, T. 12409–12410 (6 April 2011).

1749 Momir Nikolić, T. 12410–12411, 12413 (6 April 2011).

1750 Momir Nikolić, T. 12411 (6 April 2011).

1751 Momir Nikolić, T. 12412–12414 (6 April 2011) (testifying that Drago Nikolić was a duty officer at the IKM that evening and he told Momir Nikolić that he would contact the Standard Barracks concerning the order). On his way

had a meeting with Deronjić, and Dragomir Vasić, Chief of the Zvornik CJB.[1752] At the time there was chaos in the centre of Bratunac town; buses were parked with the Bosnian Muslims who had been captured along the Bratunac–Konjević Polje–Nova Kasaba axis and brought to Bratunac.[1753] At the meeting, Beara, Deronjić, and Vasić openly discussed the killing operation.[1754] Beara and Deronjić were arguing over the status of the detainees, each quoting contradictory instructions they had received from their respective superiors—Beara from Mladić and Deronjić from Karadžić.[1755] Beara insisted that the detainees should remain in Bratunac, while Deronjić demanded that they should be removed from Bratunac.[1756] According to Nikolić, it was "absolutely known at the time that all prisoners would be killed", and the only remaining question was where they would be killed, in Bratunac or Zvornik.[1757] Beara and Deronjić ultimately agreed that all the detainees should be transported to Zvornik the following day.[1758]

404. The Chamber notes that Deronjić, whose evidence was admitted into evidence pursuant to Rule 92 *quater* in the *Blagojević and Jokić* case, also testified about a meeting with Beara on 13 July 1995 with a similar subject-matter.[1759] According to Deronjić, Beara told him that he was going to kill all the Bosnian Muslim prisoners who were detained in schools and buses in Bratunac and had "orders from the top".[1760] Deronjić told Beara that he had an order from Karadžić that there would not be any killings.[1761] Deronjić did not ask Beara who gave him his orders, but based on his prior conversation with Karadžić and the information he received from Beara, he assumed that Beara was "Karadžić's emissary" because Karadžić informed Deronjić that someone would be coming with instructions.[1762] In the *Blagojević and Jokić* case Deronjić's evidence on this meeting

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back to Bratunac, Momir Nikolić saw two to four buses heading to Zvornik. Momir Nikolić, T. 12414 (6 April 2011). *See also infra* para. 405.

1752 Momir Nikolić, T. 12415, 12418 (6 April 2011). *See also supra* para. 157.

1753 Momir Nikolić, T. 12414–12415 (6 April 2011).

1754 Momir Nikolić, T. 12415–12417, 12419–12420 (6 April 2011). Nikolić was sitting outside the room with the door open and overheard the conversation between them. Momir Nikolić, T. 12417 (6 April 2011).

1755 Momir Nikolić, T. 12415–12416, 12418–12423 (6 April 2011), T. 12643, 12647 (12 April 2011). *See also* Miroslav Deronjić, Ex. P00020a, BT. 6444–6445 (22 January 2004).

1756 Momir Nikolić, T. 12416–12420, 12423 (6 April 2011). *See also* Ex. P01544b (confidential). Nikolić understood that "in all this confusion" there was a change of the order on Beara's part. Momir Nikolić, T. 12420 (6 April 2011).

1757 Momir Nikolić, T. 12419, 12424–12425 (6 April 2011). Nikolić stated that "none of the three did not have any doubt about the fate of those people, whether they would be killed or not. So this issue was never discussed at all. The fate of those men was already decided after the midnight of the 14th". Momir Nikolić, T. 12419, 12421–12422 (6 April 2011).

1758 Momir Nikolić, T. 12416, 12421–12424 (6 April 2011).

1759 Miroslav Deronjić, Ex. P00020a, BT. 6225, 6274, 6277 (20 January 2004).

1760 Miroslav Deronjić, Ex. P00020a, BT. 6226, 6274 (20 January 2004), BT. 6445–6447 (22 January 2004). *See also* PW-065, Ex. P01351, PT. 7941–7944 (28 February 2007); PW-065, T. 7776–7777 (17 November 2010).

1761 Miroslav Deronjić, Ex. P00020a, BT. 6274, 6277 (20 January 2004).

1762 Miroslav Deronjić, Ex. P00020a, BT. 6444–6447, 6461–6462 (22 January 2004). Deronjić emphasised that, while it would have been a logical explanation that Beara's orders came from Mladić, he did not make that conclusion in this instance due to Karadžić's information that "a man would come, giving [him] full instructions". Miroslav Deronjić, Ex. P00020a, BT. 6465 (22 January 2004). Deronjić stated that the meeting was finished around 3:00 a.m. of 14 July 1995. Miroslav Deronjić, Ex. P00020a, BT. 6450 (22 January 2004).

was extensively challenged.[1763] Having assessed his evidence pursuant to Rule 92 *quater*, the Chamber finds that while there is some variance between Deronjić's testimony and that of Nikolić, the crux of their evidence about the meeting is generally similar. Therefore, the Chamber accepts his evidence to the extent that it corroborates the evidence given by Nikolić and finds that there was a meeting held late on 13 July and in the early morning hours of 14 July 1995, during which Deronjić and Beara discussed the killing operation.

D. Zvornik Area (13–19 July)

1. Lead-up to the Events in Zvornik (13–14 July)

405. On 13 July, Momir Nikolić arrived at the Standard Barracks to convey Beara's order to Drago Nikolić approximately one hour and fifteen minutes after leaving the Bratunac Brigade Headquarters.[1764] When the Zvornik Brigade Duty Operations Officer informed Momir Nikolić that Drago Nikolić was currently performing Duty Officer tasks at the Kitovnice IKM and another officer offered to assist, Momir Nikolić declined, saying that he could only transmit the order to Drago Nikolić personally.[1765] Escorted by three police officers, Momir Nikolić then drove to the Kitovnice IKM, which took approximately 35 minutes.[1766] Upon arriving at the Kitovnice IKM, Momir Nikolić conveyed Beara's order to Drago Nikolić.[1767] Drago Nikolić responded that he was on duty but would call his Command and then determine what needed to be done.[1768] The conversation lasted between five and ten minutes before Momir Nikolić left to return to Bratunac.[1769]

406. Between 7:00 and 8:00 p.m., Major Dragan Obrenović, Chief of Staff of the Zvornik Brigade,[1770] received a call from Drago Nikolić.[1771] Stating that he had previously received a call from Popović, Drago Nikolić asked Obrenović to relieve him of his obligations at the Kitovnice IKM and requested the assistance of Lieutenant Miomir Jasikovac, Commander of the Zvornik Brigade MP Company,[1772] and at least one platoon in order to assist Popović in his assignment to

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1763 Miroslav Deronjić, Ex. P00020a, BT. 6440–6451, 6465 (22 January 2004); Miroslav Deronjić, Ex. P00020 (confidential), BT. 6140 (closed session) (19 January 2004), BT. 6476–6478 (private session) (22 January 2004).
1764 *See supra* para. 402. Momir Nikolić, T. 12411–12412 (6 April 2011).
1765 Momir Nikolić, T. 12412–12413 (6 April 2011). Although Momir Nikolić referred to the "Zvornik Brigade" IKM, the Chamber notes that the Zvornik Brigade IKM was located in the village of Kitovnice. *See ibid. See also supra* para. 140.
1766 Momir Nikolić, T. 12413 (6 April 2011).
1767 Momir Nikolić, T. 12413 (6 April 2011).
1768 Momir Nikolić, T. 12413 (6 April 2011).
1769 Momir Nikolić, T. 12413–12414 (6 April 2011).
1770 *See supra* para. 141.
1771 PW-057, Ex. P02279 (confidential), PT. 15830 (closed session) (26 September 2007).
1772 *See supra* para. 147.

bring a large number of prisoners from Bratunac to Zvornik and to execute them.[1773] Obrenović tacitly approved the course of action outlined by Drago Nikolić and ordered Jasikovac to return to Zvornik.[1774] When Jasikovac arrived at the Standard Barracks within the hour,[1775] Obrenović ordered him to gather four or five MP members and await further orders from Drago Nikolić.[1776] Jasikovac then gathered a group of members of the Zvornik Brigade MP.[1777]

407. The transportation of all the prisoners who had been packed into Bratunac began during the night of 13 July 1995.[1778] On his way back to Bratunac that night, Momir Nikolić observed two to four buses heading towards Zvornik.[1779]

408. Popović and Beara arrived at the Standard Barracks at approximately 7:00 a.m. on 14 July 1995, at the same time as Milorad Birčaković, a driver with the Zvornik Brigade, reported for work.[1780] Pursuant to an order from Milorad Trbić, Assistant to the Chief of Security of the Zvornik Brigade and Drago Nikolić's Deputy,[1781] at about 7:30 or 8:00 a.m., Milorad Birčaković left the Standard Barracks in a blue-green Opel Rekord to retrieve Drago Nikolić from the Kitovnice IKM so that he could attend a meeting at the Standard Barracks with Beara and Popović.[1782] Birčaković returned with Nikolić approximately 30 minutes later,[1783] and Nikolić entered his office in order to

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1773 PW-057, Ex. P02279 (confidential), PT. 15830–15832 (closed session) (26 September 2007). Popović also told Drago Nikolić that he would send someone to the IKM to verbally convey information concerning the operation. PW-057, Ex. P02279 (confidential), PT. 15830–15831 (closed session) (26 September 2007). The Chamber notes that the sequence of Drago Nikolić's call to Obrenović and Momir Nikolić's arrival at the IKM is not entirely clear from the evidence. While the information relayed by Drago Nikolić would suggest that, at the time he spoke to Obrenović, Nikolić was still awaiting the arrival of the person dispatched by Popović, Momir Nikolić testified that upon receiving Beara's order, Drago Nikolić responded that he was on duty but would call his Command. *See supra* para. 405. The Chamber, however, considers that the sequence of these events is largely immaterial, and that it is possible that Nikolić could have placed a second call to the command, or could have failed to mention Momir Nikolić's arrival when speaking to Obrenović. Regardless, the Chamber is satisfied that Drago Nikolić was relieved of duty and that Jasikovac was placed at Drago Nikolić's disposal.

1774 PW-057, Ex. P02279 (confidential), PT. 15832, 15836 (closed session) (26 September 2007). On 13 July 1995 at around 10:00 or 11:00 p.m., Mihajlo Galić was ordered to go to the Kitovnice IKM to replace Drago Nikolić as duty officer. Mihajlo Galić, Ex. P01106, PT. 10495 (25 April 2007). When Galić arrived at the IKM, he did not see Nikolić, though Nikolić should have been there when the replacement arrived according to the rules. Mihajlo Galić, Ex. P01106, PT. 10497–10498 (25 April 2007).

1775 PW-057, Ex. P02279 (confidential), PT. 15837 (closed session) (26 September 2007).

1776 PW-057, Ex. P02279 (confidential), PT. 15837 (closed session) (26 September 2007).

1777 Stanoje Birčaković, Ex. P01662, PT. 10743, 10744 (1 May 2007); PW-060, Ex. P01658 (confidential), PT. 6550 (private session) (30 January 2007). *See also* Adjudicated Fact 271. The group of MP members included Dragoje Ivanović, Goran Bogdanović, Čedo Jović, Stanoje Birčaković, and Milomir Simić. Dragoje Ivanović, Ex. P01667, PT. 14540 (30 August 2007); Stanoje Birčaković, Ex. P01662, PT. 10744, 10765 (1 May 2007).

1778 Jean-René Ruez, T. 983 (29 March 2010).

1779 Momir Nikolić, T. 12414 (6 April 2011). The Chamber notes that Nikolić's testimony regarding the presence of buses on the road supports Ruez's testimony that the transportation of prisoners began on the night of 13 July 1995. *See supra* nn. 1751, 1778.

1780 Milorad Birčaković, Ex. P01746, PT. 11088, 11102 (8 May 2007).

1781 *See supra* para. 146.

1782 Milorad Birčaković, Ex. P01746, PT. 11013–11015 (7 May 2007), PT. 11089 (8 May 2007); Milorad Birčaković, T. 9212 (1 February 2011).

1783 Milorad Birčaković, Ex. P01746, PT. 11014 (7 May 2007), PT. 11090 (8 May 2007).

meet with Beara and Popović.[1784] After 15–20 minutes,[1785] Nikolić emerged from the meeting appearing angry,[1786] and told Birčaković that he had just learned that there would be some people coming in for exchange and that Birčaković was to drive Nikolić to the Vidikovac Hotel.[1787]

409. Following the meeting at the Standard Barracks, Popović personally ordered a member of the Bratunac Brigade MP to park a UN APC near an intersection close to the bus station facing Konjević Polje.[1788] Some time after the officer and some colleagues arrived at the intersection to await further instruction, Popović appeared in a dark blue VW Golf,[1789] and a convoy of buses and trucks, which was approximately two kilometres long,[1790] began to form behind the APC.[1791]

410. While stopped, the prisoners inside the buses and trucks in the convoy were given water, as it was quite hot, but it was not enough to quench the prisoners' thirst.[1792] While the convoy stopped, one of the prisoners aboard the same bus as PW-073 died, and another prisoner was shot when he tried to escape when allowed to exit the bus to urinate.[1793] Popović then directed the APC to follow him, and led the convoy first through Konjević Polje, then turned right in the direction of Zvornik,

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1784 Milorad Birčaković, Ex. P01746, PT. 11015 (7 May 2007).

1785 Milorad Birčaković, Ex. P01746, PT. 11015 (7 May 2007), PT. 11094 (8 May 2007).

1786 Milorad Birčaković, Ex. P01746, PT. 11015 (8 May 2007), PT. 11120 (8 May 2007); Milorad Birčaković, T. 9211–9212 (1 February 2011).

1787 Milorad Birčaković, Ex. P01746, PT. 11015, 11017 (7 May 2007), PT. 11120 (8 May 2007).

1788 PW-075, Ex. P02065 (confidential), PT. 3837–3838 (private session) (8 November 2006). The Chamber notes that the MP member received this order from Popović in person. PW-075, Ex. P02065 (confidential), PT. 3837–3838 (private session) (8 November 2006). The Chamber therefore concludes, based on the timing of the formation of the bus convoy, that Popović must have conveyed the order to the MP member after the conclusion of the early morning meeting with Beara and Drago Nikolić at the Standard Barracks.

1789 PW-075, Ex. P02065 (confidential), PT. 3817–3818 (private session). PT. 3838–3839 (private session), PT. 3841 (private session) (8 November 2006).

1790 Momir Nikolić, T. 12639 (12 April 2011). Another witness's vantage point was more limited. PW-075, Ex. P02065 (confidential), PT. 3842 (private session) (8 November 2006) (testifying that the convoy extended past a bend in the road). *See also* PW-075, T. 11331 (private session) (15 March 2011). The prisoners' vantage points were also limited either by obstruction or by armed guards; when PW-008 managed to peer out of the uncovered part of the truck in which he was a passenger, the bus driver pointed a rifle at him and told him to sit down, and before the convoy departed, a soldier closed the back of the truck with a tarpaulin cover. PW-008, Ex. P01450, BT. 1400 (21 July 2003). *See also* PW-015, Ex. P00110, KT. 2962 (14 April 2000) (testifying that there were two soldiers with rifles sitting in the cabin of the truck behind his truck).

1791 PW-075, Ex. P02065 (confidential), PT. 3840 (private session) (8 November 2006); PW-075, T. 11331 (private session) (15 March 2011). *See also* PW-007, T. 531 (11 March 2010) (testifying that the trucks stopped at the edge of Bratunac where the soldiers said they were "waiting for UNPROFOR"); PW-008, Ex. P01450, BT. 1399 (21 July 2003) (stating that fellow passengers on his truck saw an UNPROFOR APC).

1792 PW-007, T. 531 (11 March 2010) (testifying that when the convoy stopped outside Bratunac the prisoners received a small amount of water); PW-008, Ex. P01450, BT. 1399 (21 July 2003) (testifying that when the convoy stopped outside Bratunac the prisoners received a small amount of water). No food was given at this time. PW-007, T. 555 (11 March 2010).

1793 PW-073, Ex. P00048 (confidential), pp. 21–23, 96.

and through Zvornik in the direction of Bijeljina.[1794] Each bus could accommodate 40 to 50 people.[1795]

411. From Konjević Polje, the column turned towards Zvornik, and drove through Josanica, where some passengers started yelling that there was a UN APC in front of the Vidikovac Hotel which joined the column.[1796] Meanwhile, Birčaković had driven Drago Nikolić in a car to the Vidikovac Hotel,[1797] where Nikolić had been ordered to await the buses' arrival.[1798] The first buses arrived at the hotel approximately five minutes after the arrival of Nikolić and Birčaković.[1799] The road curved and obscured Birčaković's view, but he observed at least five or ten buses.[1800] Nikolić instructed Birčaković to board the first bus and left in the car.[1801] On board the bus, Birčaković encountered four or five individuals he referred to as "civilian police" wearing blue uniforms, as well as Bosnian Muslim men.[1802]

412. The column passed through Divič and moved through Zvornik and towards Karakaj.[1803] Led by Popović,[1804] the first part of the convoy continued in the direction of Tuzla and finally turned right on a small narrow asphalt road before arriving at the Grbavci School.[1805] Other trucks in the convoy proceeded to the Petkovci School.[1806] Convoy movement continued throughout the day on 14 July 1995.[1807]

1794 PW-075, Ex. P02065 (confidential), PT. 3843 (private session) (8 November 2006); PW-075, T. 11332 (private session) (15 March 2011); PW-008, Ex. P01450, BT. 1400 (21 July 2003) (testifying that after spending about two hours outside Bratunac, the convoy set off again around 10:00 a.m.); PW-007, T. 532–533 (11 March 2010).

1795 PW-075, Ex. P02066, PT. 3850 (9 November 2006).

1796 PW-007, T. 533 (11 March 2010); PW-008, Ex. P01450, BT. 1400–1401 (21 July 2003) (testifying that the convoy passed through Konjević Polje and Drinjača before driving in the direction of Zvornik).

1797 The Vidikovac Hotel is located approximately two kilometres from Zvornik in the direction of Sarajevo. Milorad Birčaković, Ex. P01746, PT. 11017 (7 May 2007).

1798 Milorad Birčaković, Ex. P01746, PT. 11017 (7 May 2007), PT. 11121 (8 May 2007).

1799 Milorad Birčaković, Ex. P01746, PT. 11018 (7 May 2007).

1800 Milorad Birčaković, Ex. P01746, PT. 11018 (7 May 2007).

1801 Milorad Birčaković, Ex. P01746, PT. 11018 (7 May 2007), PT. 11121, 11150 (8 May 2007).

1802 Milorad Birčaković, Ex. P01746, PT. 11019, 11055 (7 May 2007), PT. 11122, 11149–11150 (8 May 2007).

1803 PW-007, T. 533 (11 March 2010). On the second day of his guard duty, which was either 14 or 15 July, Nebojša Jeremić, a member of the MP Company, was at the main gate of the Standard Barracks in Karakaj when he saw buses containing "Bosnian Muslim prisoners" with heads bowed, hands behind their heads, and guarded by VRS soldiers coming from the direction of Zvornik and proceeding towards Bijeljina. Nebojša Jeremić, Ex. P01280, PT. 10423–10425 (24 April 2007); Nebošja Jeremić, Ex. P01282, PT. 26085–26087, 26100 (23 September 2008). *See also* Adjudicated Fact 319.

1804 PW-075, Ex. P02066, PT. 3903 (9 November 2006).

1805 PW-075, Ex. P02065 (confidential), PT. 3843–3844 (private session) (8 November 2006); PW-007, T. 534 (11 March 2010) (testifying that the convoy turned right off the main road onto a minor road and proceeded to the elementary school in Orahovac); Jean-René Ruez, T. 983 (29 March 2010) (testifying that the first line of buses travelled north towards Zvornik and brought the prisoners to a school in Orahovac named Grbavci). The journey from Bratunac to the Grbavci School covered an estimated 50 kilometres, which took approximately one and a half hours to drive. PW-075, Ex. P02066, PT. 3903 (9 November 2006). *See infra* para. 413.

1806 PW-015, Ex. P00110, KT. 2963–2964 (14 April 2000). *See infra* para. 440.

1807 Momir Nikolić, T. 12416–12417 (6 April 2011), T. 12643 (12 April 2011) (stating that all the prisoners in Bratunac were transported to Zvornik municipality in the zone of responsibility of the Zvornik Brigade on 14 July 1995).

2. Detentions and Killings of Bosnian Muslim Males (13–17 July)

(a) Orahovac near Lažete (13–15 July)

413. Orahovac is a village located northwest of Zvornik, due south and slightly west of Petkovci.[1808] The Grbavci School is located near Orahovac,[1809] approximately 12 or 13 kilometres away from the Standard Barracks in Karakaj.[1810]

(i) Detentions – Grbavci School (13–14 July)[1811]

414. Upon arriving at the Grbavci School on the night of 13 July, Jasikovac told members of the MP that they were to provide security for prisoners who were expected to arrive at the school.[1812] According to Jasikovac, the prisoners would "most likely" leave for Tuzla the next day.[1813] Towards nightfall, a convoy of buses arrived,[1814] led by at least one UN APC driven by a VRS soldier,[1815] and accompanied by one or two MP Mercedes PUH jeeps.[1816] One of the jeeps carried a "rather senior" VRS officer wearing a camouflage uniform who spoke to Jasikovac and appeared to be in charge.[1817]

1808 Ex. P02400; Ex. P00094, p. 126; Jean-René Ruez, T. 983 (29 March 2010). The Orahovac area was within the 4th Battalion of the Zvornik Brigade's area of responsibility. PW-057, Ex. P02279 (confidential), PT. 16102 (closed session) (9 October 2007); Ex. P02397. *See also* Ex. P02473, p. 69; Adjudicated Fact 270.

1809 Ex. P02400; PW-057, Ex. P02279 (confidential), PT. 16128 (closed session) (9 October 2007); Jean-René Ruez, T. 983–984 (29 March 2010); Ex. P00094, p. 127.

1810 PW-058, Ex. P01656 (confidential), PT. 6445 (private session) (29 January 2007).

1811 The Indictment alleges that during the late evening of 13 July and continuing into 14 July 1995, under the supervision of Ljubiša Beara and Vujadin Popović, and under orders from their superior command, including Deputy Commander of the Zvornik Brigade Dragan Obrenović, Drago Nikolić and Milorad Trbić, working together with the MP Company of the Zvornik Brigade and the MP Platoon of the Bratunac Brigade, organised and facilitated the transportation of hundreds of Bosnian Muslim men to the Grbavci School in Orahovac. On 14 July, in the presence and under the personal supervision of Drago Nikolić and Milorad Trbić, VRS personnel, including members of the Zvornik Brigade MP Company, guarded and blindfolded the Bosnian Muslim men detained at the school, and at least two of the prisoners were removed from the school and summarily executed by automatic rifle fire. Indictment, para. 21.6.

1812 Stanoje Birčaković, Ex. P01662, PT. 10766 (1 May 2007); Dragoje Ivanović, Ex. P01667, PT. 14540–14541 (30 August 2007). The Zvornik Brigade MP Company attendance roster has a "T" in the column for 14 July in the rows for Jasikovac and the five members of the MP he gathered on 13 July. Ex. P01754, pp. 3, 5. *See supra* n. 1777. This indicates that they were in the field on that day. Ex. P01754, p. 8. However, a forensic document analyst gave evidence that the entries for Jasikovac and the other five were originally an "O" designating Orahovac. Jan de Koeijer, T. 17637–17643 (5 September 2011), T. 17648–17650 (6 September 2011); Ex. P02595: Ex. P02596, pp. 1, 3, 6. The Chamber finds that the roster was tampered with to conceal the presence of Jasikovac and members of the Zvornik Brigade MP at Orahovac on 14 July.

1813 Dragoje Ivanović, Ex. P01667, PT. 14541 (30 August 2007). Jasikovac also told the policemen that "not a single hair should be missing on any of the prisoners". Dragoje Ivanović, Ex. P01667, PT. 14561 (30 August 2007).

1814 Stanoje Birčaković, Ex. P01662, PT. 10745–10746 (1 May 2007); Dragoje Ivanović, Ex. P01667, PT. 14541 (30 August 2007).

1815 Stanoje Birčaković, Ex. P01662, PT. 10745 (1 May 2007).

1816 Dragoje Ivanović, Ex. P01667, PT. 14541–14542 (30 August 2007). PUH vehicles were used to transport senior VRS officers. Stanoje Birčaković, Ex. P01662, PT. 10753 (1 May 2007).

1817 Dragoje Ivanović, Ex. P01667, PT. 14542, 14546 (30 August 2007). Ivanović, a member of the Zvornik Brigade MP, did not know the officer, but described him as approximately 50 years old and 175–180 centimetres tall. Dragoje Ivanović, Ex. P01667, PT. 14546 (30 August 2007).

415. When the prisoners disembarked from the buses, Jasikovac ordered them to enter the gymnasium.[1818] The police who had also been on board the buses escorted the prisoners inside, and members of the Zvornik Brigade MP guarded the entrance to the gymnasium.[1819] By 2:00 or 3:00 a.m., when all the prisoners had entered, the gymnasium was approximately half full and contained about 350 prisoners.[1820]

416. Jasikovac and Drago Nikolić assigned the members of the MP to various locations around the school where they would spend the night.[1821] At some point during the night, the prisoners were provided with water.[1822] PW-060 and Ivanović, both of whom were members of the Zvornik Brigade MP Company and were present at the school, testified that they did not witness any mistreatment of prisoners throughout the night of 13–14 July 1995.[1823]

417. On the morning of 14 July 1995, Drago Nikolić arrived at the Grbavci School in a green Opel station wagon.[1824] He was followed shortly after by 20 to 40 VRS soldiers,[1825] who arrived to replace Jasikovac and the members of the MP.[1826] Nikolić, however, ordered Jasikovac and the members of the MP to remain nearby.[1827]

1818 Dragoje Ivanović, Ex. P01667, PT. 14543 (30 August 2007); Stanoje Birčaković, Ex. P01662, PT. 10746 (1 May 2007); PW-023, Ex. P00060, PT. 17328 (1 November 2007).

1819 PW-058, Ex. P01656 (confidential), PT. 6446, 6449, 6475–6476 (private session) (29 January 2007); Dragoje Ivanović, Ex. P01667, PT. 14543 (30 August 2007); PW-060, Ex. P01659, PT. 6531 (30 January 2007).

1820 Dragoje Ivanović, Ex. P01667, PT. 14571–14572 (30 August 2007).

1821 PW-060, Ex. P01659, PT. 6532–6533 (30 January 2007); Dragoje Ivanović, Ex. P01667, PT. 14564 (30 August 2007).

1822 Dragoje Ivanović, Ex. P01667, PT. 14544 (30 August 2007); Stanoje Birčaković, Ex. P01662, PT. 10747 (1 May 2007).

1823 PW-060, Ex. P01659, PT. 6533–6534 (30 January 2007); Dragoje Ivanović, Ex. P01667, PT. 14543–14544 (30 August 2007).

1824 Milorad Birčaković, Ex. P01746, PT. 11014, 11022 (7 May 2007); Dragoje Ivanović, Ex. P01667, PT. 14544, 14551–14552 (30 August 2007). *See also* Adjudicated Fact 285.

1825 At some point during the day on 14 July, Acting Commander of the 4th Battalion of the Zvornik Brigade, Lazar Ristić, sent an additional ten soldiers under his command to Orahovac pursuant to a request from Milorad Trbić. Lazar Ristić, Ex. P01233, PT. 10037, 10068 (16 April 2007). Sometime that afternoon, Ristić received a telephone call from one of the soldiers alerting him that the group had been asked to participate in executions. Lazar Ristić, Ex. P01233, PT. 10072 (16 April 2007). Although Ristić testified that he then went to the school and allowed his men to leave, other evidence before the Chamber indicates that Ristić told others that his men remained at the Grbavci School and that he returned to his unit. Lazar Ristić, Ex. P01233, PT. 10072–10076 (16 April 2007); Lazar Ristić, T. 9282 (2 February 2011); PW-057, Ex. P02279 (confidential), PT. 15887–15888 (closed session) (27 September 2007) (testifying that he heard from Lazar Ristić that Drago Nikolić prevented Ristić from retrieving seven or eight soldiers whom Ristić had sent to the school). The Chamber is of the view that Ristić would have had an incentive to minimise his contribution to the events on that day and therefore places more weight on the testimony of PW-057 in relation to this specific issue.

1826 Dragoje Ivanović, Ex. P01667, PT. 14544 (30 August 2007); Stanoje Birčaković, Ex. P01662, PT. 10747 (1 May 2007). *See also* Stanoje Birčaković, Ex. P01662, PT. 10747, 10767 (1 May 2007) (testifying that the "soldiers" who arrived wore camouflage fatigues but that he could not recall whether they were members of the VRS, MUP, or civilian police); PW-060, Ex. P01659, PT. 6535 (30 January 2007).

1827 Dragoje Ivanović, Ex. P01667, PT. 14544 (30 August 2007).

418. Between 10:00 a.m. and noon,[1828] the convoy led by Popović and followed by at least 10 buses[1829] carrying more prisoners and MUP members from Zvornik arrived at the school.[1830] When the prisoners disembarked, they were forced to run into the school building,[1831] escorted by the civilian police from the buses.[1832] The prisoners were also ordered to discard their personal belongings and some clothing outside and to enter the gymnasium, which was approximately 16 metres long by 12 metres wide.[1833]

419. Approximately 100 local residents, some of whom were armed, gathered near the school, commenting that "[a]ll of [the prisoners] ought to be killed".[1834] Several MP members were tasked with preventing them from approaching the gym where the prisoners were being held by standing in the road.[1835]

420. As more buses arrived, more prisoners entered the gymnasium until it became crammed with people such that there was no more floor space.[1836] The prisoners were made to sit with their knees touching their chests and were threatened with being shot if they did not.[1837] A number of witnesses gave estimates of the total number of prisoners inside which ranged from approximately 1,000 to 2,500.[1838]

1828 PW-023, Ex. P00060, PT. 17333 (1 November 2007); Mevludin Orić, Ex. P00069, PT. 944 (29 August 2006).

1829 PW-075, Ex. P02066, PT. 3849–3850 (9 November 2006) (testifying that at least ten buses were in the convoy). *See also* Mevludin Orić, Ex. P00069, PT. 933–934, 937–938, 944 (29 August 2006) (stating that a convoy of six buses and four trucks arrived around mid-day on 14 July 1995); PW-007, T. 533–534 (11 March 2010) (testifying that a convoy of buses led by an APC with UN markings arrived at the school); PW-058, Ex. P01657, PT. 6449 (29 January 2007) (estimating that there were "a dozen or more" buses).

1830 PW-075, Ex. P02065 (confidential), PT. 3837–3844 (private session) (9 November 2006) (testifying that the convoy—led by Popović in his blue VW Golf—arrived at the school). *See also* PW-058, Ex. P01657, PT. 6449, 6475–6476 (29 January 2007); Milorad Birčaković, Ex. P01746, PT. 11085, 11122, 11149–11150 (8 May 2007).

1831 PW-007, T. 534–535 (11 March 2010); Mevludin Orić, Ex. P00069, PT. 937 (29 August 2006).

1832 PW-058, Ex. P01657, PT. 6476 (29 January 2007). The civilian police did not remain at the Grbavci School to guard the prisoners, however. *Ibid.* The buses also left once emptied. PW-060, Ex. P01659, PT. 6531 (30 January 2007).

1833 Mevludin Orić, Ex. P00069, PT. 937–939, 941 (29 August 2006); PW-007, T. 534–535, 579 (11 March 2010). *See also* Adjudicated Fact 274. A pile of clothing and a crutch were spotted in front of the main entrance to the gymnasium. Tanacko Tanić, T. 7998–7999 (23 November 2010); Ex. P01382; Tanacko Tanić, Ex. P01178, PT. 10336 (23 April 2007).

1834 PW-058, Ex. P01657, PT. 6448, 6450–6451, 6467–6468 (29 January 2007).

1835 Tanacko Tanić, T. 8000 (23 November 2010); Tanacko Tanić, Ex. P01178, PT. 10337 (23 April 2007); PW-060, Ex. P01659, PT. 6547 (30 January 2007).

1836 PW-023, Ex. P00060, PT. 17332–17333 (1 November 2007) (stating that at first the conditions in the gym were "all right" but that people kept entering until there was no more floor space); PW-023, T. 770 (22 March 2010) (stating that the prisoners were "as close as sardines in a can"); PW-007, T. 538 (11 March 2010) (describing the gymnasium as so full "that you couldn't throw a matchstick and have it fall on the floor"). *See also* PW-058, Ex. P01657, PT. 6450 (29 January 2007).

1837 Mevludin Orić, Ex. P00069, PT. 943 (29 August 2006); PW-007, T. 536 (11 March 2010).

1838 PW-023, Ex. P00060, PT. 17338, 17352 (1 November 2007) (estimating that there were approximately 2,500 prisoners in the gym when full); PW-023, T. 769–770 (22 March 2010) (same); Mevludin Orić, Ex. P00069, PT. 943 (29 August 2006) (estimating that there were over 2,000 prisoners in the gym when full); PW-058, Ex. P01656 (confidential), PT. 6478–6479 (private session) (29 January 2007) (estimating that there were approximately 1,000 prisoners in the gym when full). *See also* Tanacko Tanić, T. 8048 (24 November 2010) (stating that he heard that there were 1,200 prisoners in the gym when full).

421. The gymnasium became so hot that the prisoners began to complain, and the elderly prisoners began to faint.[1839] The guards shot against a wall to quieten them.[1840] Some prisoners were selected to bring water to the others, but it was not sufficient to reach everyone.[1841] Neither food nor medical care were provided, and the only sanitation consisted of a bucket in which prisoners could relieve themselves.[1842]

422. At least two prisoners were removed from the gym, and after their respective exits, the prisoners inside the gym heard shots, screams, and then silence.[1843] The prisoners who had been removed did not return to the gymnasium,[1844] and two corpses were spotted in a corner of the yard closer to the fence and road during the course of the afternoon.[1845]

423. By the early afternoon of 14 July 1995,[1846] there were a large number of soldiers, including members of the MP,[1847] in the schoolyard in front of the gymnasium, on the playground of the school, and on the road in front of the school.[1848] The Zvornik Brigade Assistant Commander for the Logistics Organ, then-Captain Sreten Milošević, and Drago Nikolić were both standing within the schoolyard by the main gate in front of the gymnasium.[1849] Other VRS personnel sighted at the school on the afternoon of 14 July 1995 included Trbić,[1850] Jasikovac,[1851] Popović,[1852] and Beara.[1853]

1839 Mevludin Orić, Ex. P00069, PT. 944 (29 August 2006).

1840 PW-007, T. 538 (11 March 2010); Ex. P00094, pp. 130–133; Jean-René Ruez, T. 983–985 (29 March 2010). *See also* Adjudicated Fact 275.

1841 Mevludin Orić, Ex. P00069, PT. 944–945 (29 August 2006); PW-007, T. 536 (11 March 2010).

1842 PW-007, T. 555 (11 March 2010); Mevludin Orić, Ex. P00069, PT. 945 (29 August 2006). *See also* PW-023, Ex. P00060, PT. 17333–17335 (1 November 2007).

1843 PW-007, T. 537 (11 March 2010). *See also* PW-023, Ex. P00060, PT. 17333–17334 (1 November 2007); Mevludin Orić, Ex. P00069, PT. 945–946 (29 August 2006), PT. 1006 (30 August 2006).

1844 PW-007, T. 537 (11 March 2010); PW-023, Ex. P00060, PT. 17334 (1 November 2007).

1845 Tanacko Tanić, T. 7995 (23 November 2010), T. 8032 (24 November 2010); Ex. P01381 (photograph of Grbavci School grounds in which the location of the bodies was marked with a "6"); Tanacko Tanić, Ex. P01178, PT. 10336 (23 April 2007).

1846 Tanacko Tanić, Ex. P01178, PT. 10334 (23 April 2007).

1847 Tanacko Tanić, Ex. P01178, PT. 10335 (23 April 2007). One of the policemen belonged to the Doboj police. *Ibid.*

1848 Tanacko Tanić, T. 8004 (23 November 2010); Tanacko Tanić, Ex. P01178, PT. 10334–10335 (23 April 2007); Lazar Ristić, Ex. P01233, PT. 10074 (16 April 2007).

1849 Tanacko Tanić, Ex. P01178, PT. 10337–10338 (23 April 2007); Tanacko Tanić, T. 7998 (23 November 2010); PW-061, Ex. P01672, PT. 7564–7565 (22 February 2007). *See supra* para. 142. *See also* Stanoje Birčaković, Ex. P01662, PT. 10748–10750, 10767 (1 May 2007); Ex. P01663.

1850 Milorad Birčaković, Ex. P01746, PT. 11021, 11027 (7 May 2007); Lazar Ristić, Ex. P01233, PT. 10075 (16 April 2007); Ex. P01758.

1851 Stanoje Birčaković, Ex. P01662, PT. 10748 (1 May 2007); Milorad Birčaković, Ex. P01746, PT. 11021 (7 May 2007); Lazar Ristić, T. 9250 (1 February 2011); Ex. P01755.

1852 Milorad Birčaković, Ex. P01746, PT. 11024–11025, 11057–11058 (7 May 2007), PT. 11079, 11082 (8 May 2007); Tanacko Tanić, Ex. P01178, PT. 10337 (23 April 2007); Tanacko Tanić, T. 7998 (23 November 2010); PW-075, Ex. P02065 (confidential), PT. 3844 (private session) (8 November 2006); PW-075, Ex. P02066, PT. 3849–3851 (9 November 2006).

1853 PW-060, Ex. P01659, PT. 6536–6538, 6602–6603 (30 January 2007) (testifying that he saw on the afternoon of 14 July a tall, grey-haired senior officer with glasses who wore a VRS uniform which lacked the Zvornik Brigade insignia and that he was familiar with the officers of the Zvornik Brigade, leading him to conclude that the officer

424. After several hours, a delegation of officers arrived and Mladić was spotted at the entrance to the gymnasium.[1854] The prisoners were told to prepare to be taken to the Batković Collection Centre by moving in a seated position towards the door on the right hand side of the gymnasium, which led to a sort of locker room.[1855] As the prisoners passed through this L-shaped room, they were blindfolded by two other prisoners and given a drink of water before exiting through a different door in order to board the small TAM trucks waiting outside.[1856]

(ii) Killings – Orahovac (14 July)[1857]

425. Several hours after their arrival, the prisoners began to be taken out of the gym.[1858] With their hands tied, and assisted by approximately two MP members, one or two soldiers, and the driver, the prisoners were loaded in groups of 20 to 25 onto the trucks parked at the exit of the gym.[1859] Once full, the trucks drove out of the schoolyard and turned right in the direction of Tuzla.[1860] Shortly afterwards, they returned, empty, repeating the procedure until the gym was empty, when it was almost dark.[1861]

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was not from the Zvornik Brigade); Marko Milošević, Ex. P01102, PT. 13319 (26 June 2007) (testifying that when he met Beara at Petkovci School on 15 July, he observed that he was about 60 years old and had grey hair); Ex. P01459, p. 45 (an entry in the Zvornik Brigade Duty Officer Notebook dated 15:00 hours on 14 July 1995 recording that "Colonel Beara is coming in order to Orovoc Petkovci Roćević Pilica"). The Chamber considers that the entry in the Zvornik Brigade Duty Officer Notebook in fact refers to Orahovac, and, on the basis of all the aforementioned evidence, in particular, the fact that Beara was subsequently spotted at Petkovci School in the late afternoon of 14 July 1995, the Chamber is satisfied that he was present at the Grbavci School on at least one occasion in the afternoon of 14 July 1995. Dragoje Ivanović recalled that he saw at the Grbavci School on the evening of 13 July and the morning of 14 July a senior officer who was approximately 50 years old and 175–180 centimetres tall. Dragoje Ivanović, Ex. P01667, PT. 14542, 14546 (30 August 2007). Ivanović's account is not precise enough for the Chamber to be able to determine whether he was also referring to Beara.

1854 PW-007, T. 573–574 (11 March 2010); Mevludin Orić, Ex. P00069, PT. 947 (29 August 2006), PT. 995–996, 1003–1004 (30 August 2006).

1855 Mevludin Orić, Ex. P00069, PT. 947–948 (29 August 2006). *See also* PW-007, T. 537, 574 (11 March 2010); PW-023, Ex. P00060, PT. 17334 (1 November 2007); Ex. P00062; Ex. P00064.

1856 PW-007, T. 537, 540 (11 March 2010); Ex. P00043; Ex. P00044; Mevludin Orić, Ex. P00069, PT. 947, 949 (29 August 2006); PW-023, Ex. P00060, PT. 17335 (1 November 2007); Ex. P00066; Ex. P00067; PW-023, T. 746–748 (22 March 2010); Milorad Birčaković, Ex. P01746, PT. 11026 (7 May 2007). *See also* Stanoje Birčaković, Ex. P01662, PT. 10753–10754 (1 May 2007).

1857 The Indictment alleges that, during the early afternoon of 14 July 1995, under the supervision of Drago Nikolić and Milorad Trbić, Zvornik Brigade personnel transported the Bosnian Muslim males from the Grbavci School to a nearby field, where personnel, including members of the 4th Battalion of the Zvornik Brigade, summarily executed them. Drago Nikolić accompanied the trucks to and from the execution field on several occasions. Approximately 1,000 Bosnian Muslim men were killed. Indictment, para. 21.6.

1858 PW-007, T. 539 (11 March 2010); PW-058, Ex. P01657, PT. 6453 (29 January 2007). *See also* Stanoje Birčaković, Ex. P01662, PT. 10754 (1 May 2007) (estimating that the prisoners began to exit the gym between 10:00 and 11:30 a.m.).

1859 PW-058, Ex. P01657, PT. 6454 (29 January 2007); PW-058, Ex. P01656 (confidential), PT. 6458–6459 (private session) (29 January 2007); PW-060, Ex. P01659, PT. 6539–6540 (30 January 2007); PW-061, Ex. P01672, PT. 7571, 7579 (22 February 2007), PT. 7682–7683 (23 February 2007) (testifying that the MP members and soldiers formed a corridor while other MP members led prisoners towards the waiting truck); Ex. P01674; Ex. P01676; Milorad Birčaković, Ex. P01746, PT. 11025–11026 (7 May 2007).

1860 Ex. P02400; PW-058, Ex. P01657, PT. 6455 (29 January 2007) (testifying that the truck turned right in the direction of Tuzla); Milorad Birčaković, Ex. P01746, PT. 11026 (7 May 2007) (testifying that the trucks departed in the direction of Križevići). *See also* PW-060, Ex. P01659. PT. 6539 (30 January 2007) (testifying that after

426. Although the first trucks left the school without escort, Jasikovac soon told Birčaković to follow the trucks in the Opel Rekord to a fountain and then to return to the school.[1862] Nikolić was also seen getting into a metallic grey military station wagon and driving off in the direction that the trucks had gone.[1863] After proceeding down the road for approximately five minutes, the trucks turned to the left, continuing past the fountain and up a macadam road.[1864] There were two killing sites in Orahovac: the trucks reached one by going under a railroad track,[1865] while the other killing site was located closer to the road.[1866]

427. Under the supervision of Drago Nikolić, the prisoners disembarked from the trucks.[1867] A tall, moustachioed "lieutenant colonel or colonel" wearing an officer's uniform with insignia and carrying a pistol was also present and giving orders.[1868]

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leaving the school, the trucks would turn right in the opposite direction from Zvornik); Dragoje Ivanović, Ex. P01667, PT. 14549 (30 August 2007) (stating that "you could see the road, the civilians were taken towards the separation line").

1861 PW-060, Ex. P01659, PT. 6539–6540 (30 January 2007); PW-058, Ex. P01657, PT. 6455 (29 January 2007); Milorad Birčaković, Ex. P01746, PT. 11025–11026 (7 May 2007).

1862 Milorad Birčaković, Ex. P01746, PT. 11022–11023, 11026–11027 (7 May 2007); Ex. P01753.

1863 PW-060, Ex. P01659, PT. 6540 (30 January 2007); PW-060, Ex. P01658 (confidential), PT. 6614 (private session) (30 January 2007). The Chamber notes that although PW-060 originally related his sighting of Nikolić as though he had seen Nikolić drive off in the station wagon a number of times, he later conceded that it was possible that Birčaković had been driving the station wagon himself, although he maintained his certainty that he had seen Nikolić in the station wagon during the course of the day. PW-060, Ex. P01658, PT. 6540, 6607, 6612, 6614 (30 January 2007).

1864 Mevludin Orić, Ex. P00069, PT. 955 (29 August 2006); PW-007, T. 541 (11 March 2010); Milorad Birčaković, Ex. P01746, PT. 11027 (7 May 2007); Milorad Birčaković, T. 9190 (1 February 2011); Ex. P01753 (aerial photograph with an arrow showing the direction in which the trucks turned and continued past the water fountain).

1865 Jean-René Ruez, T. 987–988 (29 March 2010). *See also* PW-023, Ex. P00060, PT. 17336 (1 November 2007) (testifying that the truck he was riding in turned into a pasture, where PW-023 saw many dead bodies before proceeding to a further location where PW-023 saw more dead bodies).

1866 Jean-René Ruez, T. 987–988 (29 March 2010); Ex. P00094, p. 139 (photograph depicting the locations of both killing sites in Orahovac). *See also* Adjudicated Fact 281.

1867 PW-061, Ex. P01672, PT. 7589–7590 (22 February 2007); PW-007, T. 541–542 (11 March 2010); PW-023, Ex. P00060, PT. 17336 (1 November 2007); Mevludin Orić, Ex. P00069, PT. 955 (29 August 2006). On the basis of PW-060's testimony that he saw Drago Nikolić depart in a grey station wagon which followed the trucks and PW-061's testimony that Drago Nikolić supervised the prisoners disembarking from the trucks, the Chamber is satisfied that Drago Nikolić was present at the killing site in Orahovac on 14 July 1995. PW-057 testified that an elderly person standing in front of the 4th Battalion Command on 15 July mentioned that he had heard that Drago Nikolić participated in the shooting in Orahovac. PW-057, Ex. P02279 (confidential), PT. 15888–15889 (closed session) (27 September 2007). However, this multiple hearsay evidence is not sufficient for a finding that Drago Nikolić in fact participated in the shooting in Orahovac. PW-067 testified that on a visit to Ročević on a day in mid-July 1995 he saw that the school playground was full of buses and there were also soldiers there and that people in the village told him that they were killing people from Srebrenica and bursts of fire could be heard frequently. PW-067 also testified that later on the same afternoon he met at the Standard Barracks an officer whose name he understood to be "Drago Nikolić", that he had come from a site where people were being killed and that he had said that he had shot people himself because others were refusing to do so. PW-067, Ex. P00001a, MT. 21040–21043, 21091–21093 (22 May 2003); PW-067, Ex. P00001 (confidential), MT. 21043–21044, 21093–21096 (private session) (22 May 2003). The Chamber finds that the officer PW-067 met at the Standard Barracks was Drago Nikolić, the Chief of Security of the Zvornik Brigade. In view of PW-067's testimony about his prior visit to Ročević School, Drago Nikolić may have been referring to the killings at Kozluk on 15 July, but killings were also taking place on that day at Petkovci Dam. The testimony of PW-067, who was a Rule 92 *quater* witness, does not enable the Chamber to infer that Drago Nikolić personally shot prisoners at Orahovac or any other site at which prisoners were killed.

428. Bursts of gunfire erupted as soon as the trucks which had brought the prisoners departed, hitting the prisoners in the back.[1869] When the shooting stopped, one of the Bosnian Serb soldiers walked amongst the bodies lying on the ground, shooting them in the head.[1870] The Bosnian Serb soldiers cursed the wounded and would sometimes let them suffer in agony for a while before killing them.[1871] They also shot at survivors trying to escape.[1872] Although no evidence before the Chamber conclusively establishes which unit of soldiers carried out the shootings, one member of the 4th Battalion of the Zvornik Brigade,[1873] Gojko Simić, appeared to be in charge.[1874]

429. Trucks arrived approximately every four or five minutes.[1875] At one point, a boy of approximately five or six years old stood up from the pile of bodies and began to move towards the soldiers, calling out "Baba, where are you?"[1876] He was in shock and covered with dark blood stains and bits of others' bowel and tissue.[1877] The soldiers lowered their rifles and froze.[1878]

430. The tall, moustachioed "lieutenant colonel or colonel" turned to the soldiers and asked what they were waiting for, telling them to "finish him off".[1879] The soldiers replied that the "lieutenant colonel or colonel" had a weapon and that he should do it himself because they could not.[1880] The "lieutenant colonel or colonel" then ordered the soldiers to take the boy on the truck and to bring him back with the next "batch" to be finished off.[1881] The boy, however, was taken to a hospital in Zvornik, where he received treatment for his injuries.[1882]

1868 PW-061, Ex. P01672, PT. 7581, 7586, 7589–7590 (22 February 2007). PW-061 assumed that the man was of higher rank than Nikolić because he was giving orders not just to the Zvornik Brigade personnel, but to everyone. *Ibid.*

1869 PW-023, Ex. P00060, PT. 17336 (1 November 2007); Mevludin Orić, Ex. P00069, PT. 955–956 (29 August 2006).

1870 PW-007, T. 542 (11 March 2010); PW-061, Ex. P01672, PT. 7586 (22 February 2007). *See also* Adjudicated Fact 280.

1871 Mevludin Orić, Ex. P00069, PT. 957 (29 August 2006).

1872 Mevludin Orić, Ex. P00069, PT. 958 (29 August 2006); PW-007, T. 549 (11 March 2010).

1873 Lazar Ristić, Ex. P01233, PT. 10063 (16 April 2007).

1874 PW-007, T. 548 (11 March 2010). PW-007 recognised one of several soldiers gathered around an excavator as his co-worker, Gojko Simić, whom he had known for 15 years. PW-007, T. 543 (11 March 2010). PW-007 testified that although he never saw Simić's face, he was sure that this was the voice of his co-worker, because he had a very specific voice. PW-007, T. 543–544 (11 March 2010).

1875 Mevludin Orić, Ex. P00069, PT. 961–962 (29 August 2006). *See infra* para. 433.

1876 PW-061, Ex. P01672, PT. 7581–7582 (22 February 2007).

1877 PW-061, Ex. P01672, PT. 7581–7582, 7591 (22 February 2007).

1878 PW-061, Ex. P01672, PT. 7581 (22 February 2007).

1879 PW-061, Ex. P01672, PT. 7581–7582 (22 February 2007).

1880 PW-061, Ex. P01672, PT. 7582 (22 February 2007).

1881 PW-061, Ex. P01672, PT. 7582 (22 February 2007). When the boy was led to the truck, however, he began convulsing and refusing to board the truck. PW-061, Ex. P01672, PT. 7582 (22 February 2007), PT. 7658–7659 (23 February 2007). PW-061 was permitted to intervene at this point, and he took the boy to the hospital in Zvornik, where he knew the child would be registered and thus safe. PW-061, Ex. P01672, PT. 7582–7584 (22 February 2007), PT. 7658–7659 (23 February 2007).

1882 PW-061, Ex. P01672, PT. 7582–7584 (22 February 2007), PT. 7658–7659 (23 February 2007). *See also* PW-021, Ex. P00102, PT. 7747–7751 (26 February 2006); Ex. P01675 (confidential). *See* Annex C: Confidential Annex.

431. There are a number of testimonies that place Popović at Grbavci School on the afternoon of 14 July.[1883] He held the rank of lieutenant colonel[1884] and in July 1995 he had a moustache.[1885] On the basis of this evidence the Chamber finds that the tall, moustachioed "lieutenant colonel or colonel" who was giving orders after the prisoners disembarked and who told the soldiers to "finish [...] off" the boy was Popović.

432. The unloading and shooting process was repeated over and over with successive groups of prisoners until after darkness fell.[1886] Throughout the afternoon and evening, the soldiers and policemen at the Grbavci School could hear bursts of fire coming from the direction where the prisoners had been taken.[1887] Following one of the return trips the MP members and other uniformed men from the Zvornik Brigade who were escorting a truck were overheard saying that the prisoners had been executed.[1888]

(iii) Burials – Orahovac (14–15 July)[1889]

433. During the morning of 14 July, Dragan Jokić, the Chief of the Zvornik Brigade Engineering Company, ordered Cvijetin Ristanović, a member of the Zvornik Brigade Engineering Company,[1890] to take a "Rovokopač" backhoe excavator to Orahovac.[1891] Ristanović and several others loaded an excavator owned by the Zvornik road company onto a truck and went to Orahovac, pausing briefly at the school before continuing to a water point approximately 500 metres to one

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1883 *See supra* para. 423.

1884 *See supra* para. 126.

1885 Erin Gallagher, T. 6668–6669 (21 October 2010); Ex. P00624, p. 19.

1886 PW-007, T. 542–543 (11 March 2010). PW-007 estimated that the killings definitely lasted until 11:00 p.m. because they went on for "quite some time after darkness fell". PW-007, T. 543 (11 March 2010). *See also* PW-023, Ex. P00060, PT. 17336–17337 (1 November 2007); Mevludin Orić, Ex. P00069, PT. 959 (29 August 2006), PT. 1124 (31 August 2006).

1887 PW-058, Ex. P01657, PT. 6455 (29 January 2007); PW-060, Ex. P01659, PT. 6541 (30 January 2007); Stanoje Birčaković, Ex. P01662, PT. 10755–10756 (1 May 2007). *See also* Dragoje Ivanović, Ex. P01667, PT. 14550 (30 August 2007). Birčaković also heard rifle shots as he was escorting the trucks. Milorad Birčaković, Ex. P01746, PT. 11037 (7 May 2007).

1888 PW-058, Ex. P01657, PT. 6455–6456 (29 January 2007).

1889 Paragraph 21.6 of the Indictment alleges that on 14–15 July 1995, members of the Zvornik Brigade Engineering Company used heavy equipment to bury the victims in mass graves at the execution site.

1890 Cvijetin Ristanović, Ex. P01689, BT. 5360 (1 December 2003).

1891 Cvijetin Ristanović, Ex. P01689, BT. 5363–5366 (1 December 2003); Cvijetin Ristanović, Ex. P01682, PT. 13625–13626 (10 July 2007); Ex. P01685 (Zvornik Brigade Vehicle Log for Rovokopač Torpedo (C-3117), 1 July 1995 to 31 July 1995), pp. 1–2; Damjan Lazarević, Ex. P01642, PT. 14451 (29 August 2007). A second "Torpedo" excavator was also recorded as having spent five hours on 14 July 1995 "digging trenches" in Orahovac, and a TAM 75 truck made two trips to Orahovac on 14 July 1995. Ex. P01686 (Zvornik Brigade Vehicle Log for Rovokopač Torpedo (C-3117), 01 July 1995 to 31 July 1995), p. 2; Ex. P01684 (Zvornik Brigade Vehicle Log for TAM 75 (M-5264), 1 July 95 to 31 July 95), p. 2, *See also* Adjudicated Fact 292. After night fall on 14 July 1995, a ULT loader also stopped outside the Grbavci School for approximately five to ten minutes before proceeding to the killing site. Milorad Birčaković, Ex. P01746, PT. 11041 (7 May 2007); Mevludin Orić, Ex. P00069, PT. 964–966 (29 August 2006); Ex. P00070.

kilometre further down the road.[1892] In the early afternoon, Slavko Bogičević, the Deputy Commander of the Zvornik Brigade Engineering Company,[1893] told Ristanović to take the excavator to the meadow beyond the Živnice–Zvornik railway underpass, and to dig a pit in an area demarcated by four wooden poles.[1894] On several occasions while he was digging the pit, Ristanović was ordered to stop the machine, retreat towards the overpass, and stand facing away from the pit, at which point he heard a truck approach, followed by bursts of gunfire, and when he returned to the excavator to continue digging, Ristanović glimpsed corpses in civilian clothing in the pit.[1895] Before Ristanović had finished digging the pit, around 4:00 p.m.,[1896] fellow Zvornik Brigade Engineering Company member Milovan Miladinović relieved Ristanović.[1897] While going to the water point to wash his face, Ristanović caught a glimpse of more corpses.[1898]

434. When Sergeant 2nd Class Damjan Lazarević, Commander of the Roads and Bridges Platoon of the Zvornik Brigade Engineering Company,[1899] together with Ristanović, and two or three other soldiers returned to the water point on 15 July,[1900] Ristanović returned to his machine from the previous day and drove it under the underpass, where a second grave was marked out.[1901] Soon after Ristanović began digging, however, a water hose burst, forcing him to stop, and he was told to move to a third, unmarked area, where he saw more corpses.[1902] Meanwhile, members of the Zvornik public utility company loaded the corpses onto a ULT-220 and took them to the mass grave that had been dug out by the "backhoe" excavator.[1903] Towards the end of September 1995 the

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1892 Cvijetin Ristanović, Ex. P01689, BT. 5366–5367, 5369–5370 (1 December 2003); Cvijetin Ristanović, Ex. P01682, PT. 13620, 13625 (10 July 2007).

1893 *See supra* para. 148.

1894 Cvijetin Ristanović, Ex. P01689, BT. 5370–5372 (1 December 2003).

1895 Cvijetin Ristanović, Ex. P01689, BT. 5373–5375 (1 December 2003).

1896 Cvijetin Ristanović, Ex. P01682, PT. 13621–13622 (10 July 2007).

1897 Cvijetin Ristanović, Ex. P01689, BT. 5375–5377, 5409 (1 December 2003); Cvijetin Ristanović, Ex. P01682, PT. 13622 (10 July 2007).

1898 Cvijetin Ristanović, Ex. P01689, BT. 5376–5377 (1 December 2003).

1899 *See supra* n. 497.

1900 Cvijetin Ristanović, Ex. P01689, BT. 5382–5383 (1 December 2003); Damjan Lazarević, Ex. P01642, PT. 14439–14442, 14450 (29 August 2007).

1901 Cvijetin Ristanović, Ex. P01689, BT. 5385, 5403 (1 December 2003); Damjan Lazarević, Ex. P01642, PT. 14445 (29 August 2007). *See also* Ex. P01652, p. 15 (recording "work with BGH-700" and "work with ULT 220" in Orahovac on 15 July 1995). The TAM 75 truck from the previous day also made four trips to Orahovac on 15 July 1995. Ex. P01684 (Zvornik Brigade Vehicle Log for TAM 75 (M-5264), 1 July 95 to 31 July 95), p. 2.

1902 Cvijetin Ristanović, Ex. P01689, BT. 5385–5386 (1 December 2003). Approximately 20 to 30 corpses wearing both camouflage and civilian clothing lay across the road going under the underpass from the water point, and a number of corpses were dispersed further down that road past the underpass. Damjan Lazarević, Ex. P01642, PT. 14442–14444, 14453–14454 (29 August 2007); Ex. P01648 (photograph depicting the area where Lazarević saw bodies, marked "1", the water point, marked "x", and the area where Lazarević saw more bodies marked "2"); Cvijetin Ristanović, Ex. P01689, BT. 5383–5384, 5386 (1 December 2003) (testifying that from the water point he saw bodies across the road which goes under the underpass, where he later returned to dig).

1903 Damjan Lazarević, Ex. P01642, PT. 14446–14450 (29 August 2007); Ex. P01647 (photograph of ULT-220). A ULT-220 is a self-propelled construction machine with wheels with a loading bucket in the front and is used mainly to load construction material, but can also be used for smaller excavation on flat areas, although it cannot dig deeply. Damjan Lazarević, Ex. P01642, PT. 14446–14447 (29 August 2007). *See also* Damjan Lazarević, Ex. P01642, PT. 14469–14471 (29 August 2007); Ex. P01652, p. 15 (recording "work with ULT-220 in

bodies initially buried at Orahovac were transported away from the site and reburied elsewhere,[1904] as demonstrated by forensic evidence discussed below.

(iv) Forensic Evidence

a. Primary Graves

435. Aerial images reveal that the Lažete gravesites, which were composed of the smaller Lažete 1 and the larger Lažete 2,[1905] were created between 5 and 27 July 1995, and that they were disturbed again between 7 and 27 September 1995.[1906] The Lažete gravesites were situated close to the village of Orahovac, down the road from the Grbavci School.[1907] Lažete 1 was a primary disturbed grave[1908] which encompassed a water pipe which had been severed when the grave was initially dug.[1909] All of the approximately 130 individual bodies recovered in 2000 in Lažete 1 were male,[1910] and although almost all were clothed when found, none wore military clothing.[1911] No weapons or ammunition were found on any of the bodies in Lažete 1.[1912] In Lažete 1 89 individuals were blindfolded,[1913] as were two skulls which were found separately.[1914] Two individuals in Lažete 1 were found with their hands tied behind their back.[1915] All of the individuals in Lažete 1 had been shot multiple times with high velocity weapons,[1916] most of them from behind.[1917] Gunshot injury was determined to be the cause of death for 97% of the bodies.[1918]

Orahovac" on 15 July 1995); Ex. P01655, p. 2 (recording that the ULT-220 was used to dig trenches for 5 hours in Orahovac on 15 July 1995). A BGH-700 as well as a ULT 220 were further recorded as having worked at Orahovac on 16 July. Ex. P01652, p. 16 (recording "work with BGH-700" and "work with ULT 220" in Orahovac on 16 July 1995).

1904 *See infra* paras. 563–565.

1905 Ex. P00896, p. 7; Fredy Peccerelli, T. 8457 (6 December 2010); Adjudicated Fact 390.

1906 Dean Manning, Ex. P01819, PT. 18937–18938 (10 December 2007); Ex. P01851. *See also infra* n. 2492

1907 Fredy Peccerelli, T. 8456–8457 (6 December 2010).

1908 Fredy Peccerelli, T. 8460, 8493–8494 (6 December 2010) (testifying that machine tooth marks found on the walls of Lažete 1 supported the conclusion that it was a primary disturbed grave). *See also* Adjudicated Fact 391. *See also infra* para. 564.

1909 Ex. P00935, p. 13, fig. 19; Fredy Peccerelli, T. 8458–8459 (6 December 2010).

1910 Ex. P00896, p. 7. *See also* Ex. P00938, p. 7; Fredy Peccerelli, Ex. P00934, PT. 8785–8786 (13 March 2007) (acknowledging that the minimum number of individuals exhumed from Lažete 1 by the ICTY was 131 and not 129); Adjudicated Fact 392.

1911 Ex. P00896, p. 8. *See also* Adjudicated Fact 392.

1912 Ex. P00896, p. 8.

1913 Ex. P00896, p. 8. *See also* Adjudicated Fact 393. Clear bullet holes were found in several blindfolds. Ex. P00896, p. 8. Several witnesses indeed testified that the prisoners were blindfolded prior to being taken to the killing site. PW-007, T. 540 (11 March 2010); PW-023, Ex. P00060, PT. 17335 (1 November 2007); Mevludin Orić, Ex. P00069, PT. 948–949, 952 (29 August 2006).

1914 Ex. P00896, p. 13.

1915 Ex. P00896, p. 9.

1916 Ex. P00896, pp. 9–10, 12. Indeed, a surface search conducted prior to the excavation yielded 456 shell cases, which would have been fired from a 762 calibre Kalashnikov rifle. Fredy Peccerelli, T. 8460–8462 (6 December 2010). *See also* Ex. P00935, p. 11.

1917 Ex. P00896, p. 11.

1918 Ex. P00896, p. 13.

436. Lažete 2 involved the exhumation of three sub-graves.[1919] The first exhumation of Lažete 2 involved two separate assemblages of graves, which were designated Lažete 2A and 2B,[1920] from which a total of 165 individual male remains were recovered.[1921] Approximately 104 blindfolds were found with the bodies.[1922] Gunshot injury was determined to be the cause of death for 95%.[1923] The second exhumation was designated Lažete 2C to distinguish it from the previous exhumation of the two sub-graves.[1924] Lažete 2C was a primary disturbed grave, but still contained 17 bodies and 25 body parts,[1925] all of which were male.[1926] Eight bodies were found with blindfolds, and although clothing was found on all but one, none was of military character.[1927] All but one of the bodies in Lažete 2C exhibited evidence of gunshot injury from high velocity rifles, and the cause of death for the majority was gunshot injury.[1928]

b. Secondary Graves

437. Forensic evidence linked to the Lažete 1 and 2 gravesites was found in the Hodžići Road 3, 4, and 5 sites, which were determined to be secondary gravesites when exhumed by the Tribunal.[1929] Of the bodies exhumed from these three graves, all for whom sex could be determined

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1919 Lažete 2 was first excavated by an ICTY/PHR team in 1996, when most of the bodies were recovered, as well as again in 2000. Ex. P00896, pp. 1, 14; Fredy Peccerelli, Ex. P00934, PT. 8753 (13 March 2007); Fredy Peccerelli, T. 8468 (6 December 2010). *See also* Ex. P01328; Ex. P01329; Ex. P01330; Adjudicated Fact 395. The initial excavation in 1996 was halted due to security concerns, however, and Lažete 2 was not reexamined until 2000, when the excavation was taken over by Fredy Peccerelli. William Haglund, Ex. P01306, PT. 8911–8912 (15 March 2007); Fredy Peccerelli, T. 8467–8468, 8474–8475 (6 December 2010).

1920 William Haglund, Ex. P01306, PT. 8911 (15 March 2007); Ex. P01328. Lažete 2A was an undisturbed primary grave and held 112 nearly complete male individuals. William Haglund, Ex. P01306, PT. 8911 (15 March 2007); William Haglund, Ex. P01359, KT. 3746, 3750 (29 May 2000); Ex. P01072, p. 54. Lažete 2B was a primary disturbed grave that held 52 individuals. William Haglund, Ex. P01306, PT. 8911 (15 March 2007); Ex. P01072, p. 54. One other set of skeletal remains was recovered from the surface of Lažete 2B, bringing the total number of individual remains recovered from Lažete 2A and 2B to 165. William Haglund, Ex. P01306, PT. 8911 (15 March 2007); William Haglund, Ex. P01359, KT. 3750 (29 May 2000); Ex. P01072, p. 54.

1921 William Haglund, Ex. P01306, PT. 8911 (15 March 2007); William Haglund, Ex. P01359, KT. 3750 (29 May 2000).

1922 Ex. P01072, p. 61; William Haglund, Ex. P01359, KT. 3750 (29 May 2000). *See also* Ex. P01825 p. 24.

1923 William Haglund, Ex. P01359, KT. 3750 (29 May 2000). *See also* Adjudicated Fact 396.

1924 Ex. P00896, p. 14.

1925 Ex. P00896, p. 14. The presence of the body parts reflected the fact that, like Lažete 1, Lažete 2C had been "robbed". Ex. P00896, pp. 1, 14. *See also* Ex. P00939, p. 4; Fredy Peccerelli, Ex. P00934, PT. 8753 (13 March 2007); Fredy Peccerelli, T. 8473 (6 December 2010). The bodies in Lažete 2C were located on either side of Lažete 2A, as well as between Lažete 2A and 2B. Ex. P00939, p. 17. *See also* Fredy Peccerelli, T. 8473 (6 December 2010).

1926 Ex. P00896, p. 14.

1927 Ex. P00896, p. 14.

1928 Ex. P00896, pp. 14–15.

1929 Ex. P00872, pp. 23–24; Ex. P01821, p. 10. *See also* Ex. P01863; Adjudicated Fact 400. *See also infra* para. 564. The Hodžići Road 3, 4, and 5 gravesites were secondary graves which were exhumed by Dean Manning and his team. Christopher Lawrence, Ex. P00931, KT. 3979 (31 May 2000); Dean Manning, T. 10173 (22 February 2011); Ex. P00926; Ex. P00927; Ex. P00928. Flake limestone and glossy black rocks in Hodžići 3 and 4 were also found in the Lažete gravesites; and Hodžići 5 contained pieces of black plastic pipe which were also found in the Lažete gravesites. Ex. P00872, pp. 23–24. *See also* Ex. P01821, p. 10 (statement of Dr. Tony Brown who found that the mineralogy, pollen spores content, clast lithology, and inclusions such as a severed water pipe all point to Lažete as the origin for the Hodžići Road 3, 4, and 5 graves).

were determined to be male,[1930] and the vast majority of those for whom the cause of death could be determined died of gunshot wounds.[1931] None of the bodies found in any of the graves were wearing military uniforms or were found with weapons,[1932] and blindfolds were found in all three graves.[1933] DNA evidence also links an additional four secondary graves located along Hodžići Road—Hodžići Road 1, 2, 6, and 7—to the Lažete 1 and 2 graves, respectively.[1934]

(v) Conclusions on the Detentions at Grbavci School and Killings at Orahovac

438. As of February 2010 DNA evidence led to the identification of 118 Srebrenica-related victims in Lažete 1, 182 Srebrenica-related victims in Lažete 2, 90 Srebrenica-related victims in Hodžići Road 1, 102 Srebrenica-related victims in Hodžići Road 2, 39 Srebrenica-related victims in Hodžići Road 3, 69 Srebrenica-related victims in Hodžići Road 4, 54 Srebrenica-related victims in Hodžići Road 5, 65 Srebrenica-related victims in Hodžići Road 6, and 111 Srebrenica-related victims in Hodžići Road 7.[1935] Thus, a total of 830 Srebrenica-related victims have been recovered from gravesites associated with the killings at Orahovac.[1936] Based on all of the foregoing evidence,[1937] the Chamber finds that on 13 and 14 July 1995, between 830 and 2500 Bosnian Muslim men were detained at the Grbavci School in Orahovac and subsequently killed in a field nearby.

439. The Chamber also notes the presence and significant involvement of elements of the Zvornik Brigade, including its MP Company, in the events at the Grbavci School, as well as the presence of Popović, Drago Nikolić, Trbić, and Jasikovac. Members of the Bratunac Brigade MP Platoon were also present. Additionally, Drago Nikolić and at least one member of the Zvornik Brigade were present at the killing site, and members of the Zvornik Brigade Engineering Company were involved in the burial process.

1930 Ex. P00926, pp. 2, 8; Ex. P00927, p. 10; Ex. P00928, pp. 2, 7, 8.

1931 Ex. P00926, pp. 2, 18 (80% of the complete bodies in Hodžići 3 had a cause of death of gunshot wounds); Ex. P00927, p. 3 (75% of the almost complete bodies in Hodžići Road 4 had a cause of death of gunshot wounds); Ex. P00928, pp. 2, 21 (88% of the relatively complete bodies in Hodžići Road 5 had a cause of death of gunshot wounds).

1932 Ex. P00926, pp. 2, 18; Ex. P00927, pp. 2, 23; Ex. P00928, pp. 2, 21.

1933 Ex. P00926, pp. 2, 15 (Hodžići Road 3 contained 16 blindfolds); Ex. P00927, pp. 2, 17 (Hodžići Road 4 contained 41 blindfolds and one possible ligature); Ex. P00928, pp. 2, 15, 17–19 (Hodžići Road 5 contained 31 blindfolds).

1934 Ex. P00170, p. 48; Ex. P10863.

1935 Ex. P00170, p. 41.

1936 Ex. P00170, pp. 2–3, 41.

1937 For an estimate of the number of prisoners detained at the Grbavci School, see *supra* para. 420.

(b) Petkovci (14–16 July)

440. The village of Petkovci is located less than ten kilometres west of the Zvornik–Bijeljina road, with the turnoff for the road to Petkovci lying just north of Karakaj.[1938] The Command of the 6th Battalion of the Zvornik Brigade was located in the old school in Petkovci,[1939] approximately 600 to 800 meters from the new "Petkovci School",[1940] which was in turn located approximately 70 to 80 metres away from the main road leading to Petkovci.[1941] The Crveni Mulj Dam in Petkovci,[1942] or the "Petkovci Dam", is located approximately two or three kilometres northeast of the 6th Battalion Command in Petkovci at the base of a reservoir of liquid chemical waste from a nearby aluminium factory.[1943]

(i) Detentions and Opportunistic Killings – Petkovci School (14 July)[1944]

441. Between 10:00 a.m. and 12:00 p.m. on 14 July 1995, Deputy Commander of the 6th Battalion of the Zvornik Brigade Marko Milošević received a telephone call from the Zvornik Brigade Duty Officer, Dragan Jokić,[1945] informing him that a group of Bosnian Muslim prisoners would be brought to the Petkovci School approximately two hours later, and that they would be "accompanied by security".[1946] When Battalion Commander Captain 1st Class Ostoja Stanišić returned to the Command approximately two hours later, Milošević informed him of the call.[1947]

442. Stanišić then received a call from Dragan Jokić instructing him to notify Beara that he was to report to "the Command".[1948] Jokić told Stanišić that Beara would be somewhere around

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1938 Ex. P00094, p. 160; Ex. P02396; PW-057, Ex. P02279 (confidential), PT. 16100–16101 (closed session) (9 October 2007).

1939 Ostoja Stanišić, T. 6284 (7 October 2010); Ostoja Stanišić, Ex. P01074, PT. 11594 (16 May 2007).

1940 Marko Milošević, Ex. P01102, PT. 13318 (26 June 2007); Marko Milošević, T. 6366–6367 (8 October 2010); Ex. P01138; Ostoja Stanišić, Ex. P01074, PT. 11595–11596, 11606 (16 May 2007); Ex. P01086.

1941 Marko Milošević, Ex. P01102, PT. 13304, 13345–13347 (26 June 2007); Ex. P01103.

1942 PW-057, Ex. P02279 (confidential), PT. 15917 (closed session) (27 September 2007), PT. 16100–16101 (closed session) (9 October 2007); Ex. P02396.

1943 Ex. P00094, p. 160; Jean-René Ruez, T. 998 (29 March 2010); Marko Milošević, T. 6368–6370 (8 October 2010); Ex. P01139.

1944 The Indictment alleges that on 14 July and during the early morning hours of 15 July 1995, VRS and/or MUP personnel under the supervision of Vujadin Popović, Ljubiša Beara, Drago Nikolić, and Milorad Trbić transported approximately 1,000 Bosnian Muslim males from detention sites in and around Bratunac to the Petkovci School, where they were struck, beaten, assaulted, otherwise abused by VRS and/or MUP personnel. Many of the Bosnian Muslim men being detained in the Petkovci School were killed prior to the remainder being transported to the Dam near Petkovci for summary execution. Drago Nikolić was present at the Petkovci School on 14 July 1995 and was involved in arranging security for the site and directing and overseeing the VRS and/or MUP personnel guarding the prisoners. Indictment, paras. 21.7, 22.8.

1945 Ostoja Stanišić, Ex. P01074, PT. 11600–11601 (16 May 2007). *See also supra* para. 144.

1946 Marko Milošević, Ex. P01102, PT. 13300–13301, 13336, 13342 (26 June 2007).

1947 Marko Milošević, Ex. P01102, PT. 13300–13301, 13326 (26 June 2007); Ostoja Stanišić, Ex. P01074, PT. 11600–11601 (16 May 2007). *See also supra* para. 144.

1948 Ostoja Stanišić, Ex. P01074, PT. 11601, 11604 (16 May 2007).

Petkovci School.[1949] In the late afternoon, Stanišić dispatched Marko Milošević to the Petkovci School to convey the order to Beara[1950] Milošević encountered Drago Nikolić at the intersection approximately 70 to 80 metres away from the school,[1951] and Nikolić pointed Beara out so that Milošević could convey the message.[1952] Milošević approached Beara, relayed the message and returned to the Battalion Command within thirty minutes.[1953]

443. That afternoon, a convoy of vehicles led by at least one UN APC had arrived at the Petkovci School from Bratunac via Zvornik, having turned left just past Karakaj.[1954] Upon arriving, some prisoners were held inside the extremely crowded trucks for up to an hour.[1955] The prisoners screamed for water and one man drank his own urine.[1956]

444. The prisoners were ordered out of the trucks and told to put their hands behind their heads, and to chant pro-Serb slogans as they ran towards the entrance to the school.[1957] Sporadic shots rang out, and the VRS soldiers formed two lines to beat, kick or slap the prisoners as they ran between them.[1958] As the prisoners climbed the stairs inside the building, they were made to repeat pro-Serb slogans such as "this is Serbian land and will always remain so" and "Srebrenica has always been Serbian and will continue to be that".[1959]

1949 Ostoja Stanišić, Ex. P01074, PT. 11604 (16 May 2007).

1950 Ostoja Stanišić, Ex. P01074, PT. 11604 (16 May 2007); Marko Milošević, Ex. P01102, PT. 13302–13303 (26 June 2007).

1951 Marko Milošević, Ex. P01102, PT. 13303–13304, 13336–13337 (26 June 2007). Four or five MP members wearing camouflage uniforms and white belts were also present, and Milošević spotted a blue VW Golf III car parked near Beara and Nikolić. Marko Milošević, Ex. P01102, PT. 13304–13305 (26 June 2007); Ex. P01138.

1952 Marko Milošević, Ex. P01102, PT. 13303–13304 (26 June 2007). *See also* Ex. P01459 (Zvornik Brigade Duty Officer Notebook), p. 45 (an entry at 3:00 p.m. on 14 July records that "Colonel Beara is coming in order to Orovoc Petkovci Roćević Pilica").

1953 Marko Milošević, Ex. P01102, PT. 13303, 13318 (26 June 2007). Milošević spoke to Beara only briefly and Beara did not reply. Milošević testified that the message that he relayed was that Beara should contact "the Brigade". Marko Milošević, Ex. P01102, PT. 13303, 13305, 13319 (26 June 2007).

1954 PW-008, Ex. P01450, BT. 1399–1401 (21 July 2003); PW-015, Ex. P00110, KT. 2962–2964 (14 April 2000); PW-015, T. 1330–1331 (26 April 2010); Ex. P00115; Ex. P01083.

1955 PW-008, Ex. P01450, BT. 1402 (21 July 2003). *See also* PW-008, Ex. P01448 (confidential), PT. 3362 (private session) (31 October 2006). Upon arriving at the school that afternoon, Milošević saw trucks and buses parked down the road from the intersection, as well as troops in camouflage uniforms and olive drab uniforms guarding the school. Marko Milošević, Ex. P01102, PT. 13304, 13305 (26 June 2007).

1956 PW-008, Ex. P01450, BT. 1402 (21 July 2003).

1957 PW-015, Ex. P00110, KT. 2965 (14 April 2000) (testifying that the prisoners were ordered to jump off the trucks, run into the school with their hands behind their heads while chanting "long live the Serb republic" and "Srebrenica is Serb"); PW-015, T. 1330–1331 (26 April 2010); Ex. P00115; PW-008, Ex. P01450, BT. 1402–1404 (21 July 2003) (testifying that the prisoners were made to enter the school one by one so that they could be beaten at the entrance); Ex. P01452.

1958 PW-015, Ex. P00110, KT. 2964–2965 (14 April 2000).

1959 PW-008, Ex. P01450, BT. 1404–1405 (21 July 2003).

445. The prisoners were ordered to enter classrooms on both floors of the school,[1960] which became crowded, unbearably hot, and extremely stuffy.[1961] The prisoners were not permitted to use the toilet, so they were soaked with urine, and their thirst remained unquenched.[1962] One prisoner's attempt to open a window to alleviate the hot conditions was met with gunfire.[1963] Soldiers entered the classrooms repeatedly to demand money from the prisoners, threatening to kill them if certain sums were not handed over within 15 or 20 minutes.[1964]

446. Soldiers also entered the classroom to ask if there were prisoners from certain villages in the Srebrenica area.[1965] The men who raised their hands in reply were taken outside and never returned; the prisoners remaining inside heard the sound of beatings.[1966] When darkness fell, shooting could be heard around the building, and it continued until approximately midnight.[1967] Soldiers called groups of between two and five prisoners out of the classroom and their exits were followed by bursts of gunfire.[1968]

(ii) Killings – Petkovci Dam (15 July)[1969]

447. Sometime after midnight, the prisoners were ordered to leave the classrooms in small groups.[1970] As they exited the classrooms, the prisoners were stopped in the corridor outside and were ordered to undress[1971] and their hands were tied.[1972] Barefooted and with bound hands, the

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1960 PW-015, Ex. P00110, KT. 2995 (14 April 2000); PW-008, Ex. P01450, BT. 1404–1406 (21 July 2003); Ex. P01454 (photograph depicting the upper floor hallway at the Petkovci School); Ex. P01453 (photograph depicting the stairs leading to the upper floor hallway at the Petkovci School).

1961 PW-008, Ex. P01450, BT. 1405–1407 (21 July 2003); PW-008, Ex. P01449, PT. 3359 (31 October 2006); PW-015, Ex. P00110, KT. 2966 (14 April 2000); PW-015, T. 1342 (26 April 2010).

1962 PW-008, Ex. P01450, BT. 1406 (21 July 2003). PW-015 saw blood and urine on at least one of the classroom floors. PW-015, Ex. P00110, KT. 2968 (14 April 2000).

1963 PW-008, Ex. P01450, BT. 1407 (21 July 2003).

1964 PW-015, Ex. P00110, KT. 2966–2967 (14 April 2000); PW-008, Ex. P01450, BT. 1407 (21 July 2003).

1965 PW-008, Ex. P01450, BT. 1407 (21 July 2003).

1966 PW-008, Ex. P01450, BT. 1407–1408 (21 July 2003).

1967 PW-008, Ex. P01450, BT. 1408 (21 July 2003).

1968 PW-008, Ex. P01450, BT. 1408 (21 July 2003); PW-015, Ex. P00110, KT. 2967–2968 (14 April 2000).

1969 The Indictment alleges that on or about the evening of 14 July and the early morning hours of 15 July 1995, VRS personnel from the Zvornik Brigade, including drivers and trucks from the 6th Infantry Battalion, transported the surviving members of the group of approximately 1,000 Bosnian Muslim males from the school at Petkovci to an area below the Dam near Petkovci. VRS and/or MUP soldiers assembled them below the Dam and summarily executed them with automatic weapons. Indictment, para. 21.8.

1970 PW-008, Ex. P01450, BT. 1408–1409 (21 July 2003); PW-015, Ex. P00110, KT. 2968, 2970 (14 April 2000).

1971 PW-015, Ex. P00110, KT. 2968 (14 April 2000); PW-015, T. 1333 (26 April 2010); PW-008, Ex. P01450, BT. 1409 (21 July 2003). A pile of clothing and documents collected in the corridor. PW-015, Ex. P00110, KT. 2968–2969 (14 April 2000).

1972 PW-008, Ex. P01450, BT. 1409–1410, 1415 (21 July 2003).

prisoners descended the stairs, treading over and around dead bodies in the corridors and outside as they exited the Petkovci School building.[1973]

448. The prisoners were crowded onto the trucks parked in front of the school; the loading process continued until the prisoners could not sit despite being ordered to do so.[1974] When the trucks set off, they drove for about ten minutes,[1975] first along an asphalt road, then along a bumpy gravel road.[1976] After 15 to 20 minutes the trucks came to a halt on a plateau in front of Petkovci Dam,[1977] and the prisoners heard yelling and bursts of gunfire nearby.[1978]

449. The prisoners were taken off the trucks in groups of five or ten and were ordered to form rows.[1979] A group of uniformed VRS soldiers wearing black balaclavas covering their faces pointed their guns at the prisoners and ordered them to lie down.[1980] The VRS soldiers then opened fire at the prisoners' backs and heads from a distance of approximately seven to ten metres.[1981] Later prisoners fell on top of the prisoners previously killed.[1982] One merely pretended to be dead and observed other prisoners being killed around him.[1983] The VRS soldiers searched for survivors by kicking those lying on the ground,[1984] and one soldier called out that anyone who was still warm needed a bullet in the head.[1985]

450. More prisoners arrived, and the soldiers made them stand in rows amongst the dead before shooting them.[1986] Before one of the rounds of shooting began, one of the Bosnian Serb soldiers ordered an elderly man to "[t]ell Allah Akbar"; the elderly man complied, and then the shooting

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1973 PW-015, Ex. P00110, KT. 2969–2970 (14 April 2000); PW-008, Ex. P01450, BT. 1409, 1415–1416 (22 July 2003). The man who tied PW-015's hands slapped him and cursed his "balija mother". PW-015, Ex. P00110, KT. 2969 (14 April 2000).

1974 PW-008, T. 8877 (14 December 2010); PW-015, Ex. P00110, KT. 2970 (14 April 2000). PW-015 estimated that there were over 100 Bosnian Muslim men on the same truck with him. PW-015, Ex. P00110, KT. 2974 (14 April 2000). The soldiers also fired into the trucks while the prisoners were inside. PW-008, Ex. P01450, BT. 1416 (22 July 2003); PW-015, Ex. P00110, KT. 2970–2971 (14 April 2000).

1975 PW-008, T. 8877 (14 December 2010).

1976 PW-008, Ex. P01450, BT. 1416 (22 July 2003); PW-015, Ex. P00110, KT. 2974 (14 April 2000).

1977 PW-015, Ex. P00110, KT. 2974–2975 (14 April 2000); Jean-René Ruez, T. 998 (29 March 2010); Ex. P00094, p. 174; PW-008, Ex. P01449, PT. 3338–3339 (31 October 2006); Ex. P01455.

1978 PW-015, Ex. P00110, KT. 2974–2975 (14 April 2000); PW-008, Ex. P01450, BT. 1416–1417 (22 July 2003).

1979 PW-008, Ex. P01450, BT. 1416–1417 (22 July 2003); PW-015, Ex. P00110, KT. 2975 (14 April 2000).

1980 PW-015, Ex. P00110, KT. 2975 (14 April 2000) (testifying, *inter alia*, that the soldiers "had something black [on their heads], whether it was socks or something so you couldn't see their faces"); PW-008, Ex. P01450, BT. 1418 (22 July 2003).

1981 PW-015, Ex. P00110, KT. 2975–2976 (14 April 2000).

1982 PW-015, Ex. P00110, KT. 2976 (14 April 2000).

1983 PW-008, Ex. P01450, BT. 1419 (22 July 2003).

1984 PW-015, Ex. P00110, KT. 2976–2977 (14 April 2000). One of the soldiers kicked PW-015 and pronounced him dead. PW-015, Ex. P00110, KT. 2976–2977 (14 April 2000).

1985 PW-008, Ex. P01450, BT. 1419–1420 (22 July 2003). The man lying to the right of PW-008 was wounded and groaned in pain, so a soldier came, stepped over PW-008, and shot the man in the head at close range. PW-008, Ex. P01450, BT. 1420 (22 July 2003).

1986 PW-008, Ex. P01450, BT. 1418–1419 (22 July 2003); PW-015, Ex. P00110, KT. 2975 (14 April 2000); Ex. P00117; Jean-René Ruez, T. 999–1000 (29 March 2010); Ex. P00094, p. 176.

began.[1987] The killing continued throughout the night, marked by the noise of strong gunfire and the noise made by a tractor with a trailer.[1988]

(iii) Burials – Petkovci Dam (15 July)[1989]

451. On the morning of 15 July, an orange ULT 160 loader with a scoop and a Caterpillar 7 bulldozer belonging to the Zvornik Brigade Engineering Company arrived at the killing site to collect the bodies and deposit them onto a tractor with a trailer.[1990] Loaded with bodies, the tractor would depart and then turn off behind the Petkovci Dam, returning within an hour to be refilled by the ULT.[1991] Shots continued to ring out throughout this period.[1992]

452. Also on 15 July, the Deputy Commander of the 6th Battalion of the Zvornik Brigade, Ostoja Stanišić, authorised the use of a TAM 80 truck to assist with the disposal of bodies at the Petkovci School.[1993] Additionally, a Zvornik Brigade vehicle log for a TAM 80 truck shows six entries on 15 July recording journeys between Petkovci and the Petkovci Dam.[1994] The Chamber therefore finds that a driver and a truck from the 6th Battalion of the Zvornik Brigade made six trips between Petkovci School and the Petkovci Dam on 15 July 1995.

453. Towards the end of September 1995 the bodies initially buried at the Petkovci Dam were transported away from the site and reburied elsewhere,[1995] as demonstrated by forensic evidence discussed below.

1987 PW-008, Ex. P01450, BT. 1419 (22 July 2003).

1988 PW-015, Ex. P00110, KT. 2979–2980 (14 April 2000); PW-008, Ex. P01450, BT. 1422 (22 July 2003).

1989 The Indictment alleges that in the morning of 15 July 1995, working together with other individuals and units, VRS personnel from the Engineering Company of the Zvornik Brigade used excavators and other heavy equipment to bury the victims while the executions continued. Indictment, para. 21.8.

1990 PW-015, Ex. P00110, KT. 2981–2982, 2984 (14 April 2000); PW-008, Ex. P01450, BT. 1423 (22 July 2003); Ex. P01652, p. 15. PW-015 described the tractor as "a large type of tractor with very big wheels on the back and smaller wheels on the front [. . .] and a trailer". PW-015, Ex. P00110, KT. 2981 (14 April 2000). The Caterpillar 7 bulldozer sat idle on the scene. PW-015, Ex. P00110, KT. 2983–2984 (14 April 2000).

1991 PW-015, Ex. P00110, KT. 2981–2982 (14 April 2000). PW-015 thought that the bodies were being disposed of somewhere in the vicinity of the Petkovci Dam. PW-015, Ex. P00110, KT. 2982 (14 April 2000); Ex. P00119. *See also* Jean-René Ruez, T. 1003–1005 (30 March 2010) (explaining that because survivors stated that a tractor picked up some bodies on 15 July and took them away, but the survivors could not see where they were taken, it was assumed that the plateau in front of the Dam itself was not the initial burial site but that it was not possible to search within the Dam itself due to the toxic nature of the chemicals it contained). *See infra* paras. 454–456.

1992 PW-015, Ex. P00110, KT. 2981 (14 April 2000).

1993 Ostoja Stanišić, Ex. P01074, PT. 11610–11611 (16 May 2007).

1994 Ex. P01084. Ostoja Stanišić testified that it was impossible for the TAM 80 truck to have made the trips in Petkovci as well as the other trips recorded in Exhibit P01084. Ostoja Stanišić, Ex. P01074, PT. 11615–11616 (16 May 2007). The Trial Chamber considers that because he was implicated in the process of allocating the TAM 80 truck on 15 July 1995, Stanišić would have had reason to suggest that it was impossible for the TAM 80 truck to have been used in connection with the events at the Petkovci School, and the Trial Chamber therefore places less weight on Stanišić's testimony in this regard.

1995 *See infra* paras. 563–565.

(iv) Forensic Evidence

a. Primary Grave

454. Aerial images reveal that earth around the Petkovci Dam was first disturbed between 5 and 27 July, and then again between 7 and 27 September 1995.[1996] Although first considered to be a primary undisturbed grave when exhumed by the ICTY in April 1998,[1997] the fact that machine teeth marks were present in a grave that contained only grossly disarticulated body parts supported the conclusion that the Petkovci Dam was in fact a primary disturbed grave.[1998]

455. Even though very few whole bodies were found intact at the Petkovci Dam, there were significant numbers of gunshot wounds in those bodies.[1999] A surface search of the Petkovci Dam gravesite yielded 464 skull fragments and 211 shell casings, however, leading pathologists to conclude that a number of individuals had been shot in the head at the site.[2000]

456. Moreover, where the sex of the remains in the Petkovci Dam gravesite could be determined, it was determined to be male.[2001]

b. Secondary Graves

457. Five secondary gravesites—Liplje 1, 2, 3, 4, and 7—along the Snagovo–Liplje road were linked to the primary gravesite at Petkovci Dam through forensic evidence.[2002] One, Liplje 2, was exhumed by the ICTY between 7 and 25 April 1998.[2003] Aerial images reveal that it was created

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1996 Ex. P01855; Dean Manning, Ex. P01819, PT. 18934, 18935 (10 December 2007); Ex. P01825, p. 65; Jean-René Ruez, T. 999 (29 March 2010); Ex. P00094, p. 175. *See also infra* para. 564. *See also* Richard Wright, T. 5657 (21 September 2010); Richard Wright, Ex. P00869, PT. 7446 (21 February 2007).

1997 Richard Wright, Ex. P00874, KT. 3653 (26 May 2000); Richard Wright, T. 5656–5657 (21 September 2010).

1998 Richard Wright, Ex. P00874, KT. 3653–3655 (26 May 2000); Richard Wright, Ex. P00869, PT. 7445–7446 (21 February 2007); Richard Wright, T. 5656–5657 (21 September 2010); Ex. P00872, p. 8. *See also* Christopher Lawrence, Ex. P00931, KT. 3978–3979 (31 May 2000). This conclusion was corroborated by aerial images provided by chief investigator Jean-René Ruez. Richard Wright, Ex. P00869, PT. 7446 (21 February 2007); Richard Wright, T. 5657 (21 September 2010).

1999 Christopher Lawrence, T. 7375–7377 (8 November 2010); Ex. P00923, p. 2.

2000 Ex. P00923, pp. 2, 9, 22. *See also* Jean-René Ruez, T. 1004–1006 (30 March 2010); Ex. P00094, pp. 181, 184–188.

2001 Ex. P00923, p. 2. One of those whose remains were recovered was determined to be between the ages of 13 and 18. *Ibid.*

2002 Ex. P00170, p. 49; Ex. P01874; Ex. P01918. *See also infra* para. 564. Because the Liplje 2 gravesite contained the same type of limestone rock found at Petkovci Dam which was not found naturally in the Liplje 2 area, the primary grave at Petkovci Dam could be linked to the Liplje 2 secondary grave. Dean Manning, T. 10173 (22 February 2011); Richard Wright, Ex. P00874, KT. 3652, 3658 (26 May 2000); Ex. P00872, pp. 20–21. A twine ligature similar to those found at Liplje 2 and Čančari Road 3 was found in the grave at Petkovci Dam. Ex. P00923, p. 2.

2003 Ex. P00930, p. 3.

prior to 2 October 1995.[2004] Forensic anthropologists estimated that the disarticulated bodies contained in Liplje 2 belonged to a minimum of 192 individuals.[2005] All of the bodies for whom sex could be determined were determined to be male.[2006] Ligatures, some of which were associated with hands or forearms, were also found in the grave.[2007]

(v) Conclusions on the Detentions at the Petkovci School and Killings at the Petkovci Dam

458. DNA evidence led to the identification of 18 Srebrenica-related victims in the Petkovci Dam grave, 157 Srebrenica-related victims in Liplje 1, 173 Srebrenica-related victims in Liplje 2, 57 Srebrenica-related victims in Liplje 3, 288 Srebrenica-related victims in Liplje 4, and 116 Srebrenica-related victims in Liplje 7.[2008] Thus, a total of 809 persons listed as missing following the fall of Srebrenica have been identified in the graves associated with the killing site at the Petkovci Dam.[2009] As the Chamber has previously explained, survivors witnessed a tractor collecting bodies from the plateau on 15 July, but could not see where the bodies were taken.[2010] Moreover, chemical conditions prevented the forensic teams from examining the contents of the Dam.[2011] The Chamber thus observes that there may be additional bodies of the Bosnian Muslim men killed at the Petkovci Dam which were not exhumed from either the primary grave at the Petkovci Dam or any of the secondary graves. In conclusion, the Chamber finds that VRS soldiers killed at least 809 Bosnian Muslim men at Petkovci on 15 July 1995.

(c) Ročević School and Kozluk (14–16 July)

459. The village of Kozluk lies just off the western bank of the Drina River,[2012] approximately ten kilometres north of Karakaj.[2013] The village of Ročević is approximately five kilometres further north and slightly east, also on the western bank of the Drina River.[2014] The school in Ročević ("Ročević School") is located not far from the intersection of the Zvornik-Bijeljina road and the

2004 Ex. P01825, p. 69.
2005 Richard Wright, Ex. P00874, KT. 3659–3660 (26 May 2000); Ex. P00872, p. 11; Ex. P00930, pp. 2, 8.
2006 Ex. P00930, pp. 2, 10. One of those whose remains were recovered was estimated to have been between the ages of 8 and 13. *Ibid.*
2007 Ex. P00930, pp. 2, 16–17. The Chamber notes that such ligatures are consistent with the use of ligatures described by PW-015 and PW-008. *See supra* para. 447.
2008 Ex. P00170, p. 41.
2009 Ex. P00094, p. 257 (showing LP-1 through LP-4 along the Snagovo-Liplje Road); Ex. P00170, p. 41. The figure of 809 is the total number identified as of February 2010. Ex. P00170, pp. 2–3.
2010 *See supra* para. 451, n. 1991.
2011 Jean-René Ruez, T. 1003–1004 (30 March 2010).
2012 Dean Manning, Ex. P01819, PT. 18933 (10 December 2007); Ex. P01857.
2013 Ex. P00094, p. 189.
2014 Jean-René Ruez, T. 1011 (30 March 2010); Ex. P00094, p. 189.

road towards Dolina.[2015] The Command of the 2nd Battalion of the Zvornik Brigade was located in Malešić, approximately 12 to 14 kilometres from Ročević.[2016]

(i) Detentions – Ročević School (14–15 July)[2017]

460. During the early evening hours of 14 July,[2018] members of the Bratunac Brigade MP Platoon as well as the "Zenica Company"[2019] of the Bratunac Brigade were tasked with guarding the Ročević School,[2020] which was filled with Bosnian Muslim prisoners.[2021] The Commander of the 2nd Battalion of the Zvornik Brigade, Reserve Lieutenant Srećko Aćimović,[2022] was alerted to the fact that prisoners were being held in the gymnasium of the Ročević School around 9:30 p.m. on 14 July 1995, and he proceeded immediately to the Ročević School to investigate.[2023] When Aćimović arrived, the prisoners were screaming for water and requesting to use the bathroom.[2024] Dishevelled-looking soldiers stood in the schoolyard,[2025] seemingly under the influence of alcohol or drugs.[2026]

2015 PW-059, Ex. P01944, PT. 9920–9921 (3 April 2007), PT. 9985 (4 April 2007); Ex. P01946; Mile Janjić, Ex. P01094, PT. 17950–17951 (20 November 2007).

2016 Veljko Ivanović, Ex. P01708, PT. 18174, 18180 (26 November 2007); Srećko Aćimović, Ex. P01773, PT. 12931 (20 June 2007).

2017 The Indictment alleges that on 14 and 15 July 1995, VRS and/or MUP soldiers detained over 1,000 Bosnian Muslim males in the Ročević School, near Zvornik. Several corpses were also scattered around the Ročević School on 15 July. On 15 July, Drago Nikolić and Trbić travelled to the Ročević School to supervise the VRS personnel guarding the prisoners. Indictment, para. 21.8.1.

2018 Although Janjić was not sure whether the events he described occurred on 14 or 15 July 1995, the Chamber notes that the evidence discussed *infra* establishes that the majority of the prisoners had already been killed by the evening of 15 July, and thus at that time the school would not have been "full" of prisoners. *See infra* paras. 471–475. On this basis, the Chamber concludes that Janjić and his colleagues went to the Ročević School on the evening of 14 July 1995.

2019 Janjić testified that the term "Zenica company" was used to refer to men who had come from Zenica in 1992 and that these men were members of both the 1st and 2nd Battalions of the Bratunac Brigade. Mile Janjić, Ex. P01094, PT. 17951–17952 (20 November 2007).

2020 Mile Janjić, Ex. P01094, PT. 17948–17953 (20 November 2007). Janjić testified that he and approximately seven other Bratunac Brigade MP members set out from the Bratunac police station around 7:00 p.m. and drove towards Kravica, Konjevic Polje, and Zvornik, eventually turning left just past a sign for Ročević and proceeding a few metres before stopping at a school with a UN APC parked outside. Mile Janjić, Ex. P01094, PT. 17948–17951, 17998–17999 (20 November 2007).

2021 Mile Janjić, Ex. P01094, PT. 17953 (20 November 2007).

2022 *See supra* para. 144.

2023 Srećko Aćimović, Ex. P01773, PT. 12934–12935, 12941, 12943 (20 June 2007); Srećko Aćimović, T. 9550, 9577–9578 (8 February 2011); Mitar Lazarević, Ex. P01441, PT. 13366 (26 June 2007).

2024 Srećko Aćimović, Ex. P01773, PT. 12936–12937 (20 June 2007).

2025 Srećko Aćimović, Ex. P01773, PT. 12936 (20 June 2007). Aćimović insisted that the prisoners were not guarded by members of the Zvornik Brigade, but had heard rumours—from an unreliable source—that it was "guards from Bratunac and Višegrad". Srećko Aćimović, Ex. P01773, PT. 13033 (21 June 2007); Mitar Lazarević, Ex. P01441, PT. 13366 (26 June 2007).

2026 Srećko Aćimović, Ex. P01773, PT. 12936 (20 June 2007), PT. 13008–13009 (21 June 2007); Dragan Jović, Ex. P01703, PT. 18072 (21 November 2007) (stating that a young soldier from the 2nd Battalion who arrived at the 2nd Battalion Brigade Command on the eve of the execution stated that the soldiers at the Ročević School guarding the prisoners were drunk); Mitar Lazarević, Ex. P01441, PT. 13366–13367 (26 June 2007) (testifying that Aćimović later told Lazarević that the unknown soldiers he had seen at the Ročević School had been acting in a "very not normal way", had killed a few prisoners and wounded a local woman); Mitar Lazarević, T. 8520 (6 December 2010). The men at the school had even threatened Aćimović when he asked who was their

461. Aćimović left the Ročević School after approximately 30 minutes in order to inform the Zvornik Brigade Command about the situation.[2027] When he reached the Zvornik Brigade by phone, the Duty Officer informed Aćimović that neither Obrenović nor Lieutenant Colonel Vinko Pandurević, the Commander of the Zvornik Brigade,[2028] were present, although Popović had just arrived.[2029] Aćimović then spoke to Popović and informed him of the situation in the Ročević School.[2030] Popović told Aćimović that he "should not put things in such dramatic terms" and that the prisoners would be exchanged the next morning.[2031] Aćimović relayed this information to the president of the Ročević commune and to the soldiers at the school.[2032] Together, Aćimović and the president managed to convince the soldiers to provide the prisoners with water, and to allow them to use a toilet.[2033]

462. Aćimović attempted to contact either Pandurević or Obrenović again between 11:30 p.m. and 12:15 a.m. on 15 July, but the Zvornik Brigade Duty Officer again said that it was impossible to reach them.[2034] At approximately 1:00 a.m., a telegram arrived from the Zvornik Brigade stating that a group of men from the 2nd Battalion should be sent to Ročević "for the execution of prisoners".[2035] After consulting with Vujo Lazarević, the Assistant Battalion Commander for Morale and Religious Affairs, and Mitar Lazarević, the General Affairs Officer, and agreeing that the Battalion would not assign any personnel for that purpose, Aćimović sent a reply telegram to the Zvornik Brigade stating that the 2nd Battalion did not have any personnel available.[2036]

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commander. Srećko Aćimović, Ex. P01773, PT. 12936 (20 June 2007); Mitar Lazarević, Ex. P01441, PT. 13367–13368 (26 June 2007).

2027 Srećko Aćimović, Ex. P01773, PT. 12937 (20 June 2007); Srećko Aćimović, T. 9578 (8 February 2011).

2028 *See supra* para. 141.

2029 Srećko Aćimović, Ex. P01773, PT. 12937, 12939–12940 (20 June 2007), PT. 13007–13008 (21 June 2007); Srećko Aćimović, T. 9554–9555 (8 February 2011); Mitar Lazarević, Ex. P01441, PT. 13372–13373 (27 June 2007); Mitar Lazarević, T. 8523 (6 December 2010). Aćimović told the Duty Officer that if he spoke to either the Brigade Commander or the Chief of Staff, he should tell them what was happening in Ročević School and to contact Aćimović. Srećko Aćimović, Ex. P01773, PT. 12939 (20 June 2007).

2030 Srećko Aćimović, Ex. P01773, PT. 12940 (20 June 2007); Srećko Aćimović, T. 9554, 9558–9559 (8 February 2011). Aćimović told Popović that soldiers were killing prisoners in front of the Ročević School, that a woman had been wounded in the vicinity, that he had no control over the situation, and that a "general disaster and tragedy" could ensue. Srećko Aćimović, Ex. P01773, PT. 12940 (20 June 2007). Aćimović also told Popović that the men guarding the prisoners were under the influence of drugs or alcohol and that they were behaving erratically. Srećko Aćimović, Ex. P01773, PT. 13008–13009 (21 June 2007).

2031 Srećko Aćimović, Ex. P01773, PT. 12940 (20 June 2007); Srećko Aćimović, T. 9555–9556, 9558–9559, 9579, 9582 (8 February 2011); Mitar Lazarević, Ex. P01441, PT. 13373 (27 June 2007); Mitar Lazarević, T. 8523 (6 December 2010).

2032 Srećko Aćimović, Ex. P01773, PT. 12942 (20 June 2007), PT. 13009 (22 June 2007).

2033 Srećko Aćimović, Ex. P01773, PT. 12942 (20 June 2007), PT. 13010 (21 June 2007).

2034 Srećko Aćimović, Ex. P01773, PT. 12943, 13140 (20 June 2007).

2035 Srećko Aćimović, T. 9551 (8 February 2011); Srećko Aćimović, Ex. P01773, PT. 12945–12946 (20 June 2007), PT. 13020 (21 June 2007); Mitar Lazarević, Ex. P01441, PT. 13375 (27 June 2007); Mitar Lazarević, T. 8525 (6 December 2010). Because the telegram was coded, no one was able to read it before the signalman decoded it; at which point the entire battalion knew the contents. Mitar Lazarević, Ex. P01440 (confidential), PT. 13375 (27 June 2007).

2036 Srećko Aćimović, Ex. P01773, PT. 12946–12947 (20 June 2007), PT. 13011 (21 June 2007); Mitar Lazarević, Ex. P01441, PT. 13375–13376 (27 June 2007); Mitar Lazarević, T. 8525 (6 December 2010). *See also* Dragan

463. Another telegram containing the same order was received approximately one hour later.[2037] After again consulting with Vujo and Mitar Lazarević and deciding not to assign any men for this purpose, Aćimović and his two associates sent a second reply telegram reiterating that they lacked sufficient personnel to carry out the order.[2038] Approximately ten minutes later, around 2:30 a.m., Aćimović received a call from Drago Nikolić.[2039] Nikolić told Aćimović that the order had "come from above" and had to be carried out.[2040] Nikolić gave Aćimović an ultimatum that he should do whatever possible to allocate men by 7:00 a.m. and said that they would speak again around that time.[2041]

464. Nikolić called again at 7:00 or 8:00 a.m. on 15 July to enquire whether Aćimović had executed the order.[2042] If Aćimović was not able to assemble a group of men, Nikolić said, Aćimović and his associates should perform the task themselves, and he ordered Aćimović to meet him at the Ročević School approximately two hours later.[2043]

465. When Aćimović arrived at the Ročević School at 9:00 or 10:00 a.m., he saw at least a dozen corpses lying on the grass.[2044] Approximately 25 to 30 members of VRS MP stood in front of the gymnasium as well as behind the school.[2045] Aćimović also encountered Popović,[2046] who ordered Aćimović into one of the offices on the first floor.[2047] Shouting at Aćimović, Popović demanded to know why Aćimović had not brought his men and threatened that Aćimović would be held

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Jović, Ex. P01703, PT. 18086 (21 November 2007). Aćimović testified that he simply would not allow himself or his associates to take part in "such a mad idea". Srećko Aćimović, T. 9590 (8 February 2011).

2037 Srećko Aćimović, Ex. P01773, PT. 12947–12948 (20 June 2007).

2038 Srećko Aćimović, Ex. P01773, PT. 12948–12950 (20 June 2007); Srećko Aćimović, T. 9550 (8 February 2011). The Chamber notes that Mitar Lazarević testified that only one telegram was received from the Zvornik Brigade and only one reply refusing to allocate personnel from the 2nd Battalion was sent back. Mitar Lazarević, Ex. P01441, PT. 13405 (27 June 2007). However, the Chamber considers that whether one telegram or two were sent or received is a peripheral matter. In contrast, what is crucial is that such telegram or telegrams were followed by a telephone call from the Zvornik Brigade, which precipitated Aćimović's presence at the Ročević School on the morning of 15 July. *See infra* paras. 464–465. Moreover, the Chamber notes that the testimony of Mitar Lazarević corroborates that of Srećko Aćimović in relation to the telephone call from the Zvornik Brigade, although Lazarević did not know specifically to whom Aćimović had spoken. Mitar Lazarević, Ex. P01441, PT. 13377–13378 (27 June 2007); Mitar Lazarević, T. 8529 (6 December 2010).

2039 Srećko Aćimović, Ex. P01773, PT. 12949–12951 (20 June 2007), PT. 13046 (21 June 2007). *See supra* para. 146.

2040 Srećko Aćimović, Ex. P01773, PT. 12950–12951 (20 June 2007).

2041 Srećko Aćimović, Ex. P01773, PT. 12951 (20 June 2007). *See also* Mitar Lazarević, Ex. P01441, PT. 13377–13378 (27 June 2007); Mitar Lazarević, T. 8529 (6 December 2010).

2042 Srećko Aćimović, Ex. P01773, PT. 12951–12952 (20 June 2007).

2043 Srećko Aćimović, Ex. P01773, PT. 12952, 12953–12956 (20 June 2007).

2044 Srećko Aćimović, Ex. P01773, PT. 12957–12958 (20 June 2007). *See also* PW-058, Ex. P01657, PT. 6461–6462 (29 January 2007).

2045 Dragan Jović, Ex. P01703, PT. 18053, 18083 (21 November 2007). These men were not part of the Zvornik Brigade, but Jović heard that they might have been part of the Bratunac Brigade. *Ibid.* The Chamber notes that this would be consistent with the fact that members of the MP Platoon of the Bratunac Brigade, as well as members of the Bratunac Brigade's "Zenica" Company, were tasked with guarding the Ročević School on the night of 14 July 1995. *See supra* para. 460.

2046 Srećko Aćimović, Ex. P01773, PT. 12957–12958 (20 June 2007).

2047 Srećko Aćimović, Ex. P01773, PT. 12958 (20 June 2007).

responsible for disobeying the order.[2048] Popović continued to pressure Aćimović to seek out individuals willing to take part in the killings.[2049] He also asked Aćimović for locations which would be suitable for killing the prisoners.[2050]

466. The Chamber has received conflicting evidence from Srećko Aćimović and Dragan Jović regarding their respective roles, if any, in facilitating the recruitment of additional drivers and men willing to serve as shooters.[2051] The Chamber considers that these matters are largely peripheral to the case against the Accused, although it notes that many witnesses who were involved in the detentions and killings have reason to minimise their own involvement in and contributions to such events. The Chamber is of the view that such an incentive does not necessarily compromise the entirety of such witnesses' testimony, but it exercises caution when considering their testimony on other points. Nevertheless, the Chamber considers that the inconsistencies between Aćimović and Jović's attributions of responsibility do not require resolution in the context of the present case.

467. Popović also called the Zvornik Brigade Duty Officer and requested that vehicles and "one of two men who were [. . .] located in Petkovci or Orahovac" be sent to Ročević urgently.[2052] A single truck, driven by a member of the 2nd Battalion, arrived approximately 30 to 40 minutes

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2048 Srećko Aćimović, Ex. P01773, PT. 12958–12959 (20 June 2007). *See also* Srećko Aćimović, Ex. P01773, PT. 12964–12965 (20 June 2007).

2049 Srećko Aćimović, Ex. P01773, PT. 12959–12960 (20 June 2007). Dragan Jović testified that Aćimović sent him to enquire whether a certain "Drašković" whose brother had been killed earlier in the war wanted to participate in the executions, but stated that Drašković did not want to come and was not forced to do so. Dragan Jović, Ex. P01703, PT. 18056–18057, 18092 (21 November 2007). The Chamber notes, however, that a Vukasin Drašković was later present with PW-001 in the truck on the way to Kozluk. PW-001, T. 8790, 8797 (private session) (13 December 2010).

2050 Srećko Aćimović, Ex. P01772 (confidential), PT. 13117 (private session) (22 June 2007).

2051 *See, e.g.,* Srećko Aćimović, Ex. P01772 (confidential), PT. 12969 (private session) (20 June 2007); Srećko Aćimović, Ex. P01773, PT. 13105 (22 June 2007) (testifying that when Popović asked him to call drivers "to get their vehicles and to tell them to come to the school" he either pretended to place the phone call and did not do so, or did so but in any case told Popović that such drivers were not available); Srećko Aćimović, Ex. P01772 (confidential), PT. 13120–13121 (private session) (22 June 2007) (denying that he sent Jović to requisition a civilian truck, that he went with Jović to get the truck when Jović was first unsuccessful alone, that he sent Jović to recruit a 17-year-old to participate in the executions, and that he told Jović to give his gun to a 17-year-old so that the latter could participate in the executions). *Cf.* Dragan Jović, Ex. P01703, PT. 18060–18061 (21 November 2007) (testifying that Aćimović sent him to requisition a civilian truck, and that Aćimović accompanied him to get the truck when Jović was first unsuccessful alone). The Chamber notes that Dragan Jović was inconsistent in his testimony about whether he suggested to Popović that Đordje or Đoko Nikolić be contacted. Dragan Jović, Ex. P01703, PT. 18077, 18084 (21 November 2007) (first admitting that he "once" suggested that Đoko Nikolić could be used but then recanting and questioning how he would have known anyone's whereabouts under the circumstances). *Cf.* Srećko Aćimović, Ex. P01772 (confidential), PT. 12969–12970 (private session) (20 June 2007).

2052 Srećko Aćimović, Ex. P01773, PT. 12965–12966 (20 June 2007), PT. 12986 (21 June 2007). Milorad Trbić later told Aćimović that Popović had probably meant him or Jasikovac, the Commander of the Zvornik Brigade MP Company, but that it was Jasikovac who in fact went to Ročević. Srećko Aćimović, Ex. P01773, PT. 12987–12988 (21 June 2007). The Chamber notes that both Jasikovac and Trbić were sighted at the Ročević School during the day on 15 July 1995. *See infra* paras. 469–470. Taking the evidence of their presence as well as Aćimović's testimony into account, the Chamber is satisfied that Popović was referring to Jasikovac and Trbić when speaking to the Zvornik Brigade Duty Officer.

later.[2053] Angry that only one truck had been sent, Popović stated that "this had to be done somewhere [...] near the school and that they should all be killed in Ročević."[2054] Popović ordered Aćimović to call the drivers of six or seven civilian vehicles and order them to bring their trucks to the Ročević School.[2055]

468. When a driver arrived at the Ročević School with a small TAM truck,[2056] Popović was again upset because it was small and could fit no more than 15 people.[2057] Aćimović's driver, Dragan Jović, eventually obtained another truck from a civilian.[2058]

469. Meanwhile, Jasikovac and a number of Zvornik Brigade MP members had come from the Standard Barracks to the Ročević School to secure the grounds and the prisoners, having stopped to collect additional members of the Zvornik Brigade MP Company stationed at the Karakaj bridge along the way.[2059] By this time, an estimated 1,000 prisoners were being held inside the gymnasium of the school, guarded by members of the Zvornik Brigade.[2060] Some members of the MP were tasked with securing the entrance to the school and preventing angry Bosnian Serb civilians from approaching the prisoners.[2061] Two MP members established a checkpoint to control the cars and people approaching, while other VRS soldiers prevented the civilians from entering the yard and the school to seek revenge on the Bosnian Muslim prisoners.[2062]

2053 Srećko Aćimović, Ex. P01772 (confidential), PT. 12967 (private session) (20 June 2007), PT. 12983 (private session) (21 June 2007), PT. 13155 (private session) (22 June 2007); Dragan Jović, Ex. P01703, PT. 18058, 18059 (21 November 2007).

2054 Srećko Aćimović, Ex. P01772 (confidential), PT. 12968–12969 (private session) (20 June 2007).

2055 Srećko Aćimović, Ex. P01772 (confidential), PT. 12969 (private session) (20 June 2007).

2056 Srećko Aćimović, Ex. P01772 (confidential), PT. 12970 (private session), PT. 12972 (private session) (20 June 2007).

2057 Srećko Aćimović, Ex. P01772 (confidential), PT. 12972 (private session) (20 June 2007).

2058 Dragan Jović, Ex. P01703, PT. 18048, 18060–18061 (21 November 2007).

2059 PW-058, Ex. P01656 (confidential), PT. 6460 (private session) (29 January 2007); PW-058, Ex. P01657, PT. 6461 (29 January 2007); Stanoje Birčaković, Ex. P01662, T. 10759–10760 (1 May 2007); Dragoje Ivanović, Ex. P01667, PT. 14553 (30 August 2007). The Prosecution alleges that the Zvornik Brigade MP Company Attendance Roster was altered to conceal the fact that seven MP members were present in Ročević on 15 July 1995. Prosecution Final Brief (confidential), para. 680 (referring to Ex. P01754). The Chamber has heard evidence from a forensic document analyst who examined the Attendance Roster and concluded that the letter "R" had indeed been changed to a "T" in column 15 of Ex. P01754, p. 3. Jan de Koeijer, T. 17641–17643 (5 September 2011); Ex. P02594; Ex. P02595; Ex. P02596, p. 2. The Chamber considers that the testimony of multiple members of the MP Company of the Zvornik Brigade that they were present at the Ročević School, as well as Milorad Birčaković's testimony that he drove Miomir Jasikovac to the Ročević School on 15 July, sufficiently corroborates the contention that the Attendance Roster was altered in order to conceal the presence of members of the Zvornik Brigade MP Company at the Ročević School on 15 July 1995. Milorad Birčaković, Ex. P01746, PT. 11046–11047 (7 May 2007); Ex. P01748 (Vehicle Log for Opel Rekord P-4528), p. 4 (recording five trips of the Opel Rekord to Ročević, carrying four passengers on 15 July 1995).

2060 PW-058, Ex. P01657, PT. 6461–6462 (29 January 2007); PW-058, Ex. P01656 (confidential), PT. 6479 (private session) (29 January 2007).

2061 PW-059, Ex. P01944, PT. 9909–9913, 9920–9922 (3 April 2007), PT. 9993 (4 April 2007); PW-059, T. 10511 (private session) (28 February 2011); PW-058, Ex. P01657, PT. 6461 (29 January 2007). *See also* Ex. P01948.

2062 PW-059, Ex. P01944, PT. 9911, 9922 (3 April 2007), PT. 9993 (4 April 2007); PW-058, Ex. P01657, PT. 6462, 6487 (29 January 2007).

470. One of the vehicles which passed the checkpoint stopped by the stadium next to the school, and an MP member told PW-059 that Trbić and Drago Nikolić had arrived.[2063] PW-059 later saw Trbić directly across from the checkpoint in the school yard.[2064] Later that day, PW-059 also heard from an MP member that Trbić and Drago Nikolić had told them that everything must be kept "under control".[2065] After these orders were issued, the vehicle went through the checkpoint again, proceeding to the main road.[2066] Although PW-059 testified that he did not personally see Drago Nikolić,[2067] the Chamber notes that he also did not see Birčaković, Nikolić's driver, on that day,[2068] although Birčaković was indeed present.[2069] The Chamber therefore does not consider PW-059's testimony determinative of whether Drago Nikolić was in fact present. Rather, the Chamber notes that PW-059 heard that both Trbić and Drago Nikolić had arrived, and that they had both conveyed that everything must be kept "under control". The Chamber also notes that Birčaković recognised Nikolić's signature on the row in the vehicle log pertaining to five trips of the Opel Rekord to Ročević on 15 July 1995.[2070] Particularly when considered in connection with the fact that Drago Nikolić ordered Aćimović to meet him at Ročević School on 15 July 1995,[2071] the Chamber is satisfied that Drago Nikolić was present at the Ročević School on 15 July 1995.

(ii) Killings – Kozluk (15 July)[2072]

471. Shortly after noon, a soldier entered the office where Aćimović and Popović were, accompanied by a young man in civilian clothes who was approximately 17 or 18 years old who had "volunteered" to participate in the killings.[2073] The young man was not a member of any of the Zvornik Brigade's units and Aćimović had never seen him before.[2074] Popović ordered the young man to find other volunteers, and the latter left the office.[2075]

2063 PW-059, Ex. P01944, PT. 9923, 9925 (3 April 2007).
2064 PW-059, Ex. P01944, PT. 9960–9961 (4 April 2007).
2065 PW-059, Ex. P01944, PT. 9923 (3 April 2007).
2066 PW-059, Ex. P01944, PT. 9923–9924 (3 April 2007).
2067 PW-059, Ex. P01944, PT. 9960–9961 (4 April 2007).
2068 PW-059, Ex. P01943 (confidential), PT. 9995–9996 (private session) (4 April 2007); PW-059, Ex. P01944, PT. 9996–9997 (4 April 2007).
2069 Milorad Birčaković, Ex. P01746, PT. 11046–11047 (7 May 2007); Ex. P01748 (Vehicle Log for Opel Rekord P-4528), p. 4 (recording 5 trips of the Opel Rekord to Ročević, carrying 4 passengers on 15 July 1995).
2070 Ex. P01748, p. 4; Milorad Birčaković, T. 9192 (1 February 2011).
2071 *See supra* para. 464.
2072 The Indictment alleges that on 15 July 1995, under the supervision of Ljubiša Beara and Vujadin Popović, VRS and/or MUP personnel removed and transported over 1,000 Bosnian Muslim men who had been detained in the Ročević School on 14 and 15 July 1995 and were summarily executed with automatic weapons at a site on the bank of the Drina River, near Kozluk, on 15 July. Indictment, paras. 21.8.1, 21.10.
2073 Srećko Aćimović, Ex. P01772 (confidential), PT. 12971 (private session) (20 June 2007); PW-001, T. 8790 (private session), T. 8794, 8796 (private session) (13 December 2010).
2074 Srećko Aćimović, Ex. P01772 (confidential), PT. 12971 (private session) (20 June 2007), PT. 13118 (private session) (22 June 2007).
2075 Srećko Aćimović, Ex. P01772 (confidential), PT. 12971–12972 (private session) (20 June 2007).

472. The transportation of the prisoners from the school to the killing site began around 2:00 or 3:00 p.m.[2076] Aćimović ordered Veljko Ivanović, a driver with the 2nd Battalion, to reverse the truck close to the door of the gymnasium.[2077] The back doors of the truck were opened and three crates of ammunition which Ivanović had brought were unloaded and placed into a passenger vehicle.[2078] As VRS soldiers pointed machine guns towards the entrance to the gymnasium,[2079] "half dead" prisoners with their hands tied and eyes blindfolded exited the school.[2080] They boarded the trucks by walking up the planks which were placed as a sort of ramp leading up to the back.[2081] Those who could not keep their balance were led in.[2082] Except for one young boy, no one asked to be spared.[2083]

473. At Aćimović's direction, Dragan Jović and Veljko Ivanović drove the truck, which carried prisoners, the young man who had volunteered and three or four MP members,[2084] to a clearing above the Drina River which contained a large gravel pit in Kozluk.[2085] When the truck had been driven as far as it could get given the vegetation at the site, the prisoners were unloaded.[2086] Shooters lined both sides of the pit.[2087] All wore multi-coloured uniforms and balaclavas, while

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2076 Dragan Jović, Ex. P01703, PT. 18063 (21 November 2007).

2077 Veljko Ivanović, Ex. P01708, PT. 18174–18175, 18177 (26 November 2007).

2078 Veljko Ivanović, Ex. P01708, PT. 18177 (26 November 2007); Veljko Ivanović, Ex. P01707 (confidential), PT. 18182 (private session) (26 November 2007). Veljko Ivanović testified that around 11:00 a.m. on the "third day", Pantić at the Standard Barracks ordered him to load three crates of ammunition containing 1,000 pieces of ammunition each and go to Ročević. Veljko Ivanović, Ex. P01708, PT. 18177 (26 November 2007). On the basis of Aćimović's and Jović's testimony placing Ivanović at Ročević School on the same day they were present there, however, the Chamber is satisfied that the "third day" was in fact 15 July 1995. Srećko Aćimović, Ex. P01772, PT. 12983 (private session) (21 June 2007); Dragan Jović, Ex. P01703, PT. 18058, 18059 (21 November 2007). *See also* Mitar Lazarević, Ex. P01440 (confidential), PT. 13380–13381 (private session), PT. 13410 (private session) (27 June 2007); Mitar Lazarević, T. 8532–8533 (private session) (6 December 2010).

2079 PW-001, T. 8794 (13 December 2010).

2080 Veljko Ivanović, Ex. P01707 (confidential), PT. 18182, 18218 (private session) (26 November 2007).

2081 Veljko Ivanović, Ex. P01708, PT. 18177 (26 November 2007); Veljko Ivanović, Ex. P01707 (confidential), PT. 18182 (private session) (26 November 2007); PW-058, Ex. P01657, PT. 6464 (29 January 2007).

2082 Veljko Ivanović, Ex. P01707 (confidential), PT. 18182 (private session) (26 November 2007).

2083 Veljko Ivanović, Ex. P01707 (confidential), PT. 18190, 18218 (private session) (26 November 2007). Veljko Ivanović later learned that although the boy was removed from Ivanović's truck, he was later killed. Veljko Ivanović, Ex. P01707 (confidential), PT. 18190 (private session) (26 November 2007).

2084 Dragan Jović, Ex. P01703, PT. 18083 (21 November 2007); PW-001, T. 8797–8798 (private session) (13 December 2010).

2085 Veljko Ivanović, Ex. P01708, PT. 18177–18178, 18223 (26 November 2007); Dragan Jović, Ex. P01703, PT. 18058–18059, 18082 (21 November 2007); PW-001, T. 8791 (private session) (13 December 2010).

2086 Dragan Jović, Ex. P01703, PT. 18059–18060, 18067 (21 November 2007). The vehicles could not come to the gravel pit itself because it was overgrown by vegetation. Dragan Jović, Ex. P01703, PT. 18067 (21 November 2007).

2087 PW-001, T. 8801–8802 (13 December 2010) (testifying that approximately 50 shooters lined both sides of the pit); Veljko Ivanović, Ex. P01707 (confidential), PT. 18190–18191, 18195 (private session) (26 November 2007) (estimating that "up to eight" men were shooting the prisoners and testifying that they wore balaclavas). Ivanović testified that he believed that those who were shooting the prisoners belonged to the 6th Battalion. Veljko Ivanović, Ex. P01707 (confidential), PT. 18193 (private session) (26 November 2007). However, the Chamber notes that his evidence on the identities of those who were shooting is hearsay and based on speculation, in addition to being rather disorganised. Veljko Ivanović, Ex. P01707 (confidential), PT. 18191–18193, 18209, 18210 (private session) (26 November 2007). The Chamber is therefore not able to make a finding as to the specific unit that carried out the killing.

some also wore white cross belts indicating that they were members of the MP.[2088] No officers or commanders were present.[2089]

474. As the prisoners came off the trucks and fell towards the pit, the shooters shot at them from both sides.[2090] The disorganised and improvised nature of the crossfire, as well as the shooters' lack of professionalism, made it appear as if the shooters might end up shooting each other.[2091] Wounded prisoners fled into the Drina River, clutching at the shrubbery.[2092] When the prisoners began to refuse to get off the truck,[2093] the young volunteer was ordered to climb into the truck to force them out and was thrown off, barely avoiding falling into the pit himself.[2094]

475. After the first trip with Ivanović, Jović transported prisoners to Kozluk two or three times.[2095] By this point, additional members of the VRS, including the MP, had arrived at the killing site.[2096] Ivanović also drove between three and four more trips from the Ročević School to Kozluk and back.[2097]

(iii) Burials – Kozluk (16 July)[2098]

476. In the early morning of 16 July 1995, Damjan Lazarević was told to go to Kozluk in order to bury the bodies of people who had been executed.[2099] At approximately the same time, Dragan Jokić ordered Miloš Mitrović and Nikola Rikanović, two members of the Zvornik Brigade Engineering Company, to take an excavator called a "skip" or "torpedo" and go to the Vitinka mineral water factory in Kozluk; Jokić said that Lazarević would meet them somewhere along the

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2088 PW-001, T. 8802, 8804–8805 (private session) (13 December 2010); Dragan Jović, Ex. P01703, PT. 18060 (21 November 2007); Veljko Ivanović, Ex. P01707 (confidential), PT. 18191, 18195 (private session) (26 November 2007). PW-001 testified that he saw that a member of the Zvornik Brigade MP Company named Milomir, who wore a camouflage uniform with a white belt and carried a gun, was present at the killing site, but the evidence does not allow a conclusion to be drawn as to whether he was shooting. PW-001, T. 8805–8808 (private session) (13 December 2010).

2089 Veljko Ivanović, Ex. P01707 (confidential), PT. 18222 (private session) (26 November 2007).

2090 PW-001, T. 8801, 8813 (13 December 2010).

2091 Veljko Ivanović, Ex. P01707 (confidential), PT. 18222 (private session) (26 November 2007).

2092 Veljko Ivanović, Ex. P01707 (confidential), PT. 18189 (private session) (26 November 2007).

2093 PW-001, T. 8813 (13 December 2010).

2094 PW-001, T. 8791, 8803–8804 (private session) (13 December 2010).

2095 Dragan Jović, Ex. P01703, PT. 18061–18062 (21 November 2007). The truck that Jović drove was smaller and could "maybe" hold some ten prisoners as well as the soldiers securing them. Dragan Jović, Ex. P01703, PT. 18061 (21 November 2007).

2096 Dragan Jović, Ex. P01703, PT. 18065, 18084 (21 November 2007).

2097 Veljko Ivanović, Ex. P01707 (confidential), PT. 18191 (private session) (26 November 2007).

2098 The Indictment alleges that on 16 July 1995, working together with other individuals and units, members of the Zvornik Brigade Engineering Company buried the bodies of those who had been executed at Kozluk in a mass grave nearby. Indictment, para. 21.10.

2099 Damjan Lazarević, Ex. P01642, PT. 14454–14455 (29 August 2007). *See also* Ex. P01684, p. 2 (recording that a Zvornik Brigade TAM 75 truck made two trips to Kozluk on 16 July 1995); Jean-René Ruez, T. 1014 (30 March 2010); Ex. P00094, p. 196.

road.[2100] When Mitrović and Rikanović arrived, Lazarević guided them along a path towards the Drina River which terminated in front of a pile of decomposing bodies wearing civilian clothing lying in gravel pits approximately 20 to 30 metres away from the river.[2101]

477. The excavator's hydraulic system malfunctioned and was not strong enough to finish covering the bodies with dirt,[2102] and so a civilian named Rade Bošković was called in to finish the task with an ULT-220 which belonged to the stone quarry in Josanica.[2103] The task was complete within an hour and a half of Bošković's arrival, and Lazarević and Mitrović also left the gravel pits.[2104] Towards the end of September 1995 the bodies initially buried at Kozluk were transported away from the site and reburied elsewhere,[2105] as demonstrated by forensic evidence discussed below.

(iv) Forensic Evidence

478. Aerial images reveal that the Kozluk gravesite, which contained three areas of human remains,[2106] was first created between 5 and 17 July 1995.[2107] It was disturbed between 7 September and 27 September 1995,[2108] and although some of the bodies had been removed, the main part of the gravesite remained undisturbed until the ICTY-led exhumation began in 1999.[2109] Shell casings were also found throughout the grave,[2110] and approximately 89% of the whole or largely complete

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2100 Miloš Mitrović, Ex. P01693, BT. 5590, 5594, 5603–5604, 5606–5610 (3 December 2003), BT. 5620 (4 December 2003); Ex. P00871, p. 5. The Zvornik Brigade Vehicle Log for a Rovokopač Torpedo from Birač Holding recorded a Torpedo excavator "digging trenches in Kozluk" on 16 July 1995. Ex. P01654, p. 2.

2101 Miloš Mitrović, Ex. P01693, BT. 5604–5606 (3 December 2003); Damjan Lazarević, Ex. P01642, PT. 14456–14457 (29 August 2007). Several masked young men with painted faces whom Lazarević did not recognise were also present. Damjan Lazarević, Ex. P01642, PT. 14457 (29 August 2007).

2102 Miloš Mitrović, Ex. P01693, BT. 5606, 5608–5609 (3 December 2003); Damjan Lazarević, Ex. P01642, PT. 14457, 14478 (29 August 2007).

2103 Miloš Mitrović, Ex. P01693, BT. 5606–5607, 5609–5610 (3 December 2003); Damjan Lazarević, Ex. P01642, PT. 14457–14459 (29 August 2007), PT. 14522 (30 August 2007).

2104 Miloš Mitrović, Ex. P01693, BT. 5610 (3 December 2003); Damjan Lazarević, Ex. P01642, PT. 14458–14459 (29 August 2007).

2105 *See infra* paras. 563–565.

2106 Ex. P00894, p. 6. These three areas were designated KK1, KK2, and KK3. Ex. P00894, p. 6. An unknown number of bodies had been removed from KK2 by heavy machinery, leaving behind tooth marks and approximately 49 body parts in the soil immediately adjacent to an area which contained 18 undisturbed bodies. Richard Wright, Ex. P00874, KT. 3678 (29 May 2000); Richard Wright, Ex. P00869, PT. 7508–7509 (21 February 2007); Richard Wright, T. 5709, 5711, 5714, 5715 (21 September 2010); Ex. P00871, pp. 6, 11–12; Ex. P00870; Ex. P00891, Ex. P01015. An additional unknown number of bodies had also been removed from KK3 by machinery, leaving behind traces of some 156 body parts and 270 undisturbed bodies. Ex. P00871, p. 6. At the top of the mass of bodies in KK3 there were signs of disturbance. Ex. P00871, p. 12. Three relatively complete bodies were also recovered from KK1; when extensive stripping and trenching proved that no additional remains were present, the forensic anthropologist concluded that the three bodies were left behind after the robbing of the grave at area KK2. Ex. P00871, p. 11.

2107 Dean Manning, Ex. P01819, PT. 18933 (10 December 2007); Ex. P01858.

2108 *See supra* para. 564.

2109 Richard Wright, Ex. P00874, KT. 3701 (29 May 2000); Richard Wright, Ex. P00869, PT. 7456 (21 February 2007). These areas yielded remains that, according to anthropologists, belonged to a minimum of 340 individuals. Ex. P00894, p. 6.

2110 Richard Wright, Ex. P00874, KT. 3688, 3702 (29 May 2000); Richard Wright, Ex. P00869, PT. 7507

bodies recovered from the gravesite bore evidence of gunshot wounds from high velocity rifles.[2111] The bodies for which sex could be determined were found to be male and ranged from 8 to 85 years of age.[2112] Ligatures were associated with approximately 40% of the bodies,[2113] while around 16 percent had been blindfolded.[2114] Altogether 336 of the Srebrenica-related victims missing have been identified by DNA analysis in remains recovered from the Kozluk primary grave.[2115]

479. Two secondary graves located along Čančari Road—Čančari Road 1 and Čančari Road 3—were linked to the Kozluk primary grave on the basis of the broken glass and other materials found at both sites.[2116] Čančari Road 1 was merely probed and no DNA information is available regarding the remains in it.[2117] The graves at Čančari Road 2, 3, 7, and 13 were linked to Kozluk by DNA analysis: 118 of the Srebrenica missing were identified in Čančari Road 2; 138 in Čančari Road 3; 108 in Čančari Road 7; and 61 in Čančari Road 13.[2118]

480. Therefore a total of 761 individuals listed as missing following the fall of Srebrenica have been identified through DNA analysis as having been in the Kozluk primary grave and the secondary graves at Čančari Road found to be associated with it.

(v) Conclusions on the Detentions at the Ročević School and Killings at Kozluk

481. Based on all of the foregoing evidence, the Chamber finds that between 14 and 15 July 1995, over 761 Bosnian Muslim men were detained at the Ročević School and that Bosnian Serb Forces subsequently killed them in the former rubbish dump of the Vitinka bottle company near Kozluk, a nearby clearing overlooking the Drina River.

(21 February 2007); Richard Wright, T. 5713 (21 September 2010). Based on the fact that the bodies' limbs were not disarranged and the bullets were embedded in the soil underneath the bodies, the forensic anthropologist concluded that those on the outside edges of KK 3 had been executed on the spot. Richard Wright, Ex. P00869, PT. 7507 (21 February 2007); Ex. P00871, pp. 11–12.

2111 John Clark, Ex. P00897, KT. 3915–3917 (30 May 2000); Ex. P00894, pp. 6, 8–10. The analysis tended to suggest that people were more often shot from behind. The average of two to three shots per body led the forensic pathologist to conclude that the injuries were not caused by a large-scale random spraying of individuals with automatic gunfire. John Clark, Ex. P00897, KT. 3917 (30 May 2000); Ex. P00894, p. 8.

2112 John Clark, Ex. P00897, KT. 3912 (30 May 2000); Ex. P00894, p. 6.

2113 Richard Wright, Ex. P00874, KT. 3717 (29 May 2000); Richard Wright, T. 5716 (21 September 2010); Ex. P00871, p. 13; John Clark, Ex. P00897, KT. 3914–3915 (30 May 2000). The Chamber notes that this is consistent with the testimony of Veljko Ivanović, who testified that the prisoners' hands were tied when they boarded the trucks at the Ročević School. *See supra* para. 472.

2114 Richard Wright, Ex. P00874, KT. 3681 (29 May 2000); Richard Wright, T. 5716 (21 September 2010); Ex. P00871, p. 13.

2115 Ex. P00170, p. 41.

2116 Dean Manning, T. 10173–10174 (22 February 2011); Dean Manning, Ex. P01819, PT. 18976 (10 December 2007); Ex. P00871, p. 15. *See also* Ex. P00094, p. 194. The primary mass grave at Kozluk was in a rubbish dump in the area next to the Drina River and within and around the grave was a significant amount of broken green glass and bottling factory labels indicating the Vitinka Bottle Factory located approximately one kilometre from the Kozluk grave. Dean Manning, Ex. P01819, PT. 18976–18977 (10 December 2007); Ex. P01911, pp. 25, 36.

2117 Ex. P00170, p. 3; Ex. P00871, p. 15.

2118 Ex. P00170, pp. 3–4, 40–41, 48, 75. *See also* Ex. P01882.

482. The Chamber also takes note of the presence of various Zvornik Brigade units and their significant involvement in the events at the detention site at Ročević School and at the killing site in Kozluk. These units include the Zvornik Brigade MP Company and the Zvornik Brigade Engineering Company. Members of the Bratunac Brigade MP Platoon were also present at the Ročević School.

(d) Detentions – Kula School (14–15 July)[2119]

483. On 14 July 1995, armed VRS soldiers transported Bosnian Muslims who had been held in Bratunac to a school[2120] in Kula, a hamlet in the village of Pilica.[2121] Pilica is located north of Zvornik, in the area of responsibility of the 1st Battalion of the Zvornik Brigade.[2122] Several buses of Bosnian Muslim prisoners made this journey from Bratunac.[2123] Early that same morning, the Zvornik Brigade Command sent a telegram to the 1st Battalion instructing them to prepare Kula School for the arrival of 100 to 200 men from Srebrenica and to secure the entrances of the school

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2119 The Indictment alleges that on or about 14 July 1995, VRS and/or MUP personnel, under the supervision of Vujadin Popović and Ljubiša Beara, transported approximately 1,200 Bosnian Muslim males from detention sites in Bratunac to Kula School near Pilica. On or about 14 and 15 July 1995, VRS military personnel with automatic weapons summarily executed many of the Bosnian Muslim males who were being detained at Kula School. On or about 14 and 15 July, Drago Nikolić was involved in arranging security for the site and directing and overseeing Zvornik Brigade personnel and Bratunac Brigade MP members guarding the prisoners. Indictment, para. 21.9.

2120 Known as the "Nikola Tesla" school and commonly referred to as the "Kula" school or the "Tower", the school was a large structure, with two storeys and a big gym. Jean-René Ruez, T. 1015–1016, (30 March 2010), T. 1673 (4 May 2010); Ex. P00094, pp. 202–205; Jevto Bogdanović, Ex. P01669, PT. 11319 (10 May 2007). *See also* Rajko Babić, Ex. P01635, PT. 10213 (18 April 2007). *See also* Ex. P01763 (an aerial image of the Pilica school area).

2121 PW-016, Ex. P01762, KT. 3029–3032 (14 April 2000); PW-073, Ex. P00048 (confidential), pp. 21–23; PW-073, T. 624–625 (12 March 2010). The Chamber notes that PW-073 gave unclear evidence about the precise location in which he was detained, referring to it alternately as a school and as cultural hall. *See, e.g.*, PW-073, Ex. P00048 (confidential), pp. 23, 110; PW-073, T. 624–625, 625–628 (private session) (12 March 2010). PW-073 testified that the building in which he was detained had two floors and that he was transported from the detention site to the killing site. PW-073, T. 627–628 (12 March 2010); PW-073, Ex. P00048 (confidential), pp. 31–33. Noting that the part of the Pilica Cultural Centre in which prisoners were detained has only one floor, and noting the absence of any evidence that prisoners were transported from Pilica Cultural Centre to Branjevo Farm, the Chamber is satisfied that PW-073 could not have been detained at Pilica Cultural Centre and was in fact detained at Kula School. The Chamber further notes that PW-073 estimated that he arrived at the detention location on 15 July, where he remained for two nights. PW-073, Ex. P00048 (confidential), pp. 24, 26. Having compared this testimony with the evidence of other witnesses to the events at Branjevo Farm on 16 July, including Dražen Erdemović and Rajko Babić, the Chamber is satisfied that PW-073 in fact arrived at Kula School on 14 July along with the other busloads of prisoners, and that his references to "17 July" actually refer to events which occurred on 16 July when the prisoners were removed from the school and transported to Branjevo Military Farm. *See* Rajko Babić, Ex. P01635, PT. 10214–10221 (18 April 2007); Dražen Erdemović, Ex. P00215, PT. 10962–10964 (4 May 2007).

2122 Richard Butler, T. 16813 (19 July 2011). *See also* Adjudicated Fact 319; Ex. P00104, p. 5; PW-057, Ex. P02279 (confidential), PT. 16094–16095 (private session) (9 October 2007); Ex. P02392 (circle marking Pilica village).

2123 PW-016, Ex. P01762, KT. 3029–3032 (14 April 2000). PW-073 also saw two brothers whom he was able to identify by name "on this route from Srebrenica to Pilica" who were "taken out" and "never came back". PW-073, T. 633 (12 March 2010). Both men were reported as having gone missing on 11 July 1995. Their remains were later exhumed from gravesites located in Kamenica. *See* Ex. P01940 (confidential). The Chamber notes that "Kamenica" is the alternate name for the "Čančari" secondary gravesites, many of which were associated with the primary gravesite at Branjevo Military Farm, as discussed in the section on forensics, in paragraphs 506–507 below. Thomas Parsons, T. 10403 (24 February 2011).

once the men were accommodated there.[2124] Accordingly, approximately 12 members of the 1st Battalion, who were under the command of Security Officer Slavko Perić, a.k.a. Captain Muderiz, proceeded to the school to await the prisoners' arrival.[2125]

484. At approximately 2:00 p.m., buses of Bosnian Muslim prisoners began to arrive at the school.[2126] Soldiers who were not from the 1st Battalion arrived on the buses with the prisoners and directed them into the gym and the classrooms on the second floor of the school.[2127] The Bosnian Muslims detained at the school wore civilian clothing, and amongst them were individuals who were not fit for military service, including 15 or 16 year old boys as well as elderly men who were about 80 years old.[2128] On the basis of the evidence concerning the number of buses arriving at the school on 14 July, [2129] as well as the evidence of the number of Bosnian Muslims transported to Branjevo Military Farm as discussed in a later section,[2130] the Chamber finds that at least 1,000 Bosnian Muslims were detained at Kula School. The prisoners were secured at the school by the members of the 1st Battalion of the Zvornik Brigade.[2131]

485. As more Bosnian Muslim men arrived, the gym and classrooms became overcrowded.[2132] The conditions inside Kula School were poor.[2133] Prisoners in the gym requested to be let out in

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2124 Rajko Babić, Ex. P01635, PT. 10213–10220 (18 April 2007). The telegram stated that the prisoners would spend the night at the school and would be exchanged in Tuzla on the following day. Rajko Babić, Ex. P01635, PT. 10215–10217 (18 April 2007).

2125 Rajko Babić, Ex. P01635, PT. 10217–10220 (18 April 2007).

2126 Rajko Babić, Ex. P01635, PT. 10221–10222 (18 April 2007).

2127 Rajko Babić, Ex. P01635, PT. 10222–10227 (18 April 2007); PW-016, Ex. P01762, KT. 3031–3032 (14 April 2000). PW-016 testified that there were two soldiers on board the bus he was on, but that these were not the same soldiers as the ones he saw in Bratunac where he had been detained before. PW-016, Ex. P01762, KT. 3031 (14 April 2000). Babić knew that the soldiers were not from the 1st Battalion, but did not know from which unit they came. Rajko Babić, Ex. P01635, PT. 10223 (18 April 2007).

2128 Rajko Babić, Ex. P01635, PT. 10250 (18 April 2007); PW-073, Ex. P00048 (confidential), pp. 24–25; PW-073, T. 628 (private session) (12 March 2010). *See also* Jevto Bogdanović, Ex. P01669, PT. 11322 (10 May 2007) (describing the prisoners he saw at the school on 16 July as civilians, based on their clothing).

2129 After the events, villagers who lived in the houses around the school told Rajko Babić that a total of six buses "had brought those Muslims" to the school. Rajko Babić, Ex. P01635, PT. 10236 (18 April 2007). PW-016 estimated that there were about four to five buses going towards the school, in addition to the bus he was on. PW-016, Ex. P01762, T. 3032 (14 April 2000). PW-073 testified that a total of seven busloads of prisoners were brought to Pilica. PW-073, T. 624–625 (12 March 2010); PW-073, Ex. P00048 (confidential), p. 12.

2130 Dražen Erdemović estimated that between 15 and 20 buses arrived at Branjevo Military Farm on 16 July 1995 and on the basis of this he estimated that between 1,000 and 1,200 were killed that day at Branjevo Military Farm. Dražen Erdemović, Ex. P00215, PT. 10983 (4 May 2007); Dražen Erdemović, T. 1881 (17 May 2010). *See also infra* paras. 489–490, 495.

2131 Rajko Babić, Ex. P01635, PT. 10213–10220 (18 April 2007). *See also* PW-016, Ex. P01762, KT. 3031, 3039 (14 April 2000); PW-073, Ex. P00048 (confidential), pp. 25–26.

2132 PW-016, Ex. P01762, KT. 3031–3032 (14 April 2000); PW-073, Ex. P00048 (confidential), pp. 24–25; PW-073, T. 627 (private session) (12 March 2010); Rajko Babić, Ex. P01635, PT. 10223 (18 April 2007). When no more prisoners could fit into the gym, the soldier directing the prisoners into the school told other soldiers outside that no more civilians should be taken inside, and some prisoners remained on the buses outside. Rajko Babić, Ex. P01635, PT. 10224, 10236 (18 April 2007).

2133 Rajko Babić testified that it was hot outside and there was no ventilation. Some of the prisoners collapsed. Rajko Babić, Ex. P01635, PT. 10224, 10226 (18 April 2007). *See also* Adjudicated Fact 321.

order to get water and use the toilet.[2134] PW-073, who was held in one of the classrooms on the second floor of the school,[2135] testified that those who left the room were beaten with rifle butts and that others urinated where they were for fear of being beaten on their way to the toilet.[2136] No medical treatment was provided to any of the men in the school, nor was there sufficient water.[2137]

486. On 15 July, Perić sent additional members of the 1st Battalion to the school so that a total of 40 to 50 soldiers were present.[2138] Throughout the day, soldiers entered the school and took jewellery, watches, and money from the Bosnian Muslim prisoners, threatening to kill them if the prisoners did not hand over 10,000 German Marks.[2139] Jasikovac also visited the school on 15 July,[2140] as did a man who was addressed as a "lieutenant-colonel or colonel" and wore a camouflage uniform.[2141] One of the members of the 1st Battalion heard the "lieutenant-colonel or colonel" make a comment which the 1st Battalion soldier understood to mean that the Bosnian Muslims would be transported from the school and killed.[2142]

487. While they were being detained, soldiers took some Bosnian Muslim prisoners out of the school.[2143] Some were beaten.[2144] Prisoners inside the school could hear screaming and moaning, followed by bursts of gunfire and then silence.[2145] At one point, PW-016, who had been allowed to

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2134 Rajko Babić, Ex. P01635, PT. 10225 (18 April 2007).

2135 PW-073, T. 627 (private session) (12 March 2010); Rajko Babić, Ex. P01635, PT. 10226–10227 (18 April 2007). Once the gym became overcrowded, the prisoners spilled out into the corridor and onto the stairs leading to the second floor of the school, and a soldier who had arrived on one of the buses directed subsequent prisoners to enter the classrooms on the second floor. *Ibid.*

2136 PW-073, Ex. P00048 (confidential), p. 24. On the way to the toilet and back, those who did exit the room had to walk through a corridor of five or six soldiers who punched them in the ribs with a rifle butt. PW-073, T. 627–628 (private session) (12 March 2010).

2137 PW-016, Ex. P01762, KT. 3036–3037 (14 April 2000) (testifying about the night of 14–15 July).

2138 Rajko Babić, Ex. P01635, PT. 10233 (18 April 2007). The soldiers who were already at the school remained there and were not replaced. Rajko Babić, Ex. P01635, PT. 10233 (18 April 2007). An entry in the Zvornik Brigade Duty Officer's Notebook for 15 July 1995 records a request by the 1st Battalion for oil and gasoline for "transport of troops to Kula" and for 10 crates of 7.62 mm ammunition. Ex. P00014, p. 143. In relation to the identity of the soldiers at the school, the Chamber notes that PW-073 stated that he did not see any members of the MP while detained at the school, nor did he see soldiers wearing berets, nor could he see any ranks or insignia on any of the soldiers guarding the prisoners at the school. He only saw "regular multi-coloured uniforms". PW-073, Ex. P00048 (confidential), p. 30.

2139 PW-016, Ex. P01762, KT. 3037–3038 (14 April 2000). *See also* Adjudicated Fact 322.

2140 Milorad Birčaković, Ex. P01746, PT. 11045 (7 May 2007). Birčaković, Jasikovac's driver, remained outside while Jasikovac went to the school to "inspect". Milorad Birčaković, Ex. P01746, PT. 11046 (7 May 2007).

2141 Rajko Babić, Ex. P01635, PT. 10237, 10240 (18 April 2007). Babić did not know the officer's name and did not remember whether any other soldiers arrived with him, but recalled that he was tall, heavily built, clean-shaven, with blond hair combed over with receding hairline, and wore a camouflage uniform. Rajko Babić, Ex. P01635, PT. 10237–10238, 10239–10241 (18 April 2007).

2142 Rajko Babić, Ex. P01635, PT. 10239–10240 (18 April 2007).

2143 PW-073, Ex. P00048 (confidential), p. 23; PW-016, Ex. P01762, PT. 3038–3039 (14 April 2000) (testifying about the night of 15–16 July 1995). PW-016 does not explicitly state who took the prisoners out of the gym during the night. *Ibid.* The Chamber considers the evidence he provides in this respect, however, in the context of other actions taken by soldiers throughout the day of 15 July 1995. *See also* Adjudicated Fact 577.

2144 PW-073, Ex. P00048 (confidential), p. 23. *See also* Adjudicated Fact 577.

2145 PW-073 testified that at various intervals throughout the period of his detention, prisoners were taken outside in groups of four or five. PW-073, Ex. P00048 (confidential), pp. 23–24, 27–29, 54. PW-016 testified that men were taken out of the school on the night of 15 July, but that he did not hear any sounds after these men were taken

fetch water from the spring behind the school while under the guard of a soldier, heard a bus approach the front of the school, followed by people crying for help and the sound of shooting from the direction he had heard the bus arrive.[2146] On the morning of 16 July, nine bodies in civilian clothing were observed about 50 metres away from the school.[2147]

488. On the basis of the foregoing evidence, the Chamber concludes that Bosnian Serb Forces shot and killed at least nine of the prisoners who were detained at Kula School between 14 and 16 July 1995, and that a number of them also died as a result as the poor conditions of detention.[2148]

(e) Killings at Branjevo Military Farm and Pilica Cultural Centre (16 July)

(i) Transportation of Detainees from Kula School (16 July)[2149]

489. On the morning of 16 July 1995, VRS soldiers began directing the Bosnian Muslims detained at the school in Kula out of the school.[2150] Members of the work platoon of the Lokanj-Pilica Battalion of the Zvornik Brigade, who had been ordered by their commander, Radivoje

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away. PW-016, Ex. P01762, KT. 3039 (14 April 2000). Rajko Babić testified that although shooting could be heard around the school every day, there were a number of "shops" near the school which were frequented by soldiers who would drink until late at night and, once drunk, would shoot into the air. According to Babić, the sound of shots was not unusual. He further testified that the shots could not be heard inside the school. Rajko Babić, Ex. P01635, PT. 10230 (18 April 2007). While the Chamber accepts that soldiers in the area of the school may have been shooting into the air, it also accepts as credible PW-073's evidence that when prisoners were removed from the school, he heard screaming, followed by shots, and then silence.

2146 PW-016, Ex. P01762, KT. 3033, 3036 (14 April 2000) (testifying about the night of 14–15 July 1995). PW-016 heard the shooting for between five and ten minutes, as he was ordered to return to the gym immediately, and was not able to see what was happening because it was dark at the time. PW-016, Ex. P01762, KT. 3035–3036, 3050 (14 April 2000). However, traces on the school's façade as well as shell-casings discovered near the school suggest that shooting took place in this area. Jean-René Ruez, T. 1016–1018 (30 March 2010); Ex. P00094, pp. 203, 206, 208, 209–212. Moreover, Rajko Babić confirmed that on the evening of 14–15 July, while accompanied by a guard, some of the prisoners were allowed to fetch water from the spring near the school. Rajko Babić, Ex. P01635, PT. 10227–10228 (18 April 2007). The Chamber notes that although Rajko Babić also testified that on the night of 14–15 July, nothing remarkable other than an electricity outage occurred at the school, that the prisoners were calm, the windows were open, there was a light breeze, and the prisoners were grateful to the soldiers for being comfortable, this evidence is in contrast to other evidence before the Chamber which it considers more credible. Rajko Babić, Ex. P01635, PT. 10230–10231 (18 April 2007). The Chamber will therefore not rely on this aspect of Babić's testimony.

2147 Jevto Bogdanović, Ex. P01669, PT. 11323–11324, 11344 (10 May 2007). In addition, Milorad Birčaković saw the dead body of a man who, according to one of the locals, had jumped out of one of the school's windows. Milorad Birčaković, Ex. P01746, PT. 11046 (7 May 2007).

2148 Two or three prisoners died as a result of a lack of air on the night of 14–15 July and their bodies were taken outside by other prisoners. PW-016, Ex. P01762, KT. 3036 (14 April 2000). *See also* Adjudicated Fact 321.

2149 The Indictment alleges that on the morning of 16 July 1995, VRS personnel, under the supervision of Beara and Popović, transported the remaining members of the approximately 1,200 Bosnian Muslim males who had been detained at Kula School by bus to Branjevo Military Farm, a Zvornik Brigade military facility. Indictment, para. 21.11.

2150 Rajko Babić, Ex. P01635, PT. 10234–10235 (18 April 2007). Although Rajko Babić did not go to the school on 16 July 1995, he was able to observe the events at the school from the terrace of his nearby house, and he estimated that the process of removing prisoners from the school began before noon, around 10:00 or 11:00 a.m. *Ibid.* On the morning of 16 July, Bosnian Serb soldiers entered the school and said that all young men should leave the gym one by one in order to be exchanged, upon which PW-016 exited the school. PW-016, Ex. P01762, KT. 3039–3040 (14 April 2000). PW-073 testified that soldiers came into the school and told the prisoners that

Lakić, to go to the school that morning were told by unknown soldiers at the school to put the prisoners on buses "so that they could be taken away".[2151] The members of the work platoon secured school's doors to prevent people inside from escaping.[2152] The Bosnian Muslim prisoners exited the school in groups of eight; their hands were tied by the following group of prisoners and some prisoners were blindfolded before being escorted by soldiers to buses lined up outside the school.[2153] During this process, several armed soldiers swore at the prisoners and beat them with rifle butts.[2154] One or two soldiers boarded each of the buses[2155] and transported the prisoners to Branjevo Military Farm.[2156] Soldiers present at the school ordered members of the work platoon to load the nine bodies observed outside the school onto a tractor-trailer, which was driven away by an unidentified man.[2157]

490. On the basis of the evidence before it, [2158] the Chamber accepts the possibility that a number of Bosnian Muslims initially held at Kula School may not have reached Branjevo Military Farm.

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whoever had money could go to Sarajevo, and once those with money had left, those remaining were told that they would be taken to Tuzla. PW-073, Ex. P00048 (confidential), pp. 26–27.

2151 Jevto Bogdanović, Ex. P01669, PT. 11314–11315, 11319–11322, 11324 (10 May 2007).

2152 Jevto Bogdanović, Ex. P01669, PT. 11320–11322, 11324 (10 May 2007).

2153 Rajko Babić, Ex. P01635, PT. 10234–10236 (18 April 2007). Rajko Babić saw three Bosnian Muslims standing next to each other facing the wall of the school, although the wall blocked his view of further events. He later heard that the prisoners were taken out of the school in groups of eight, and while being guarded by soldiers were made to face the wall, and to have their hands tied by the eight prisoners that came after them. Babić saw the back of a parked bus at the school. *Ibid. See also* Jevto Bogdanović, Ex. P01669, PT. 11320–11322 (10 May 2007); PW-016, Ex. P01762, KT. 3040 (14 April 2000); PW-073, Ex. P00048 (confidential), pp. 26–27, 29, 31.

2154 PW-073, Ex. P00048 (confidential), pp. 29, 59. PW-073 described these soldiers as four "officers" in light clothes with unbuttoned shirts, carrying automatic rifles. *Ibid.*

2155 PW-073, Ex. P00048 (confidential) pp. 29, 31.

2156 The buses full of Bosnian Muslims were leaving the school quickly and were returning empty soon after. PW-073, Ex. P00048 (confidential), p. 26. The Chamber notes that an intercepted conversation at 1:58 p.m. on 16 July between the Duty Officers of the Drina Corps Command and the Zvornik Brigade Command records the latter transmitting Popović's urgent request for 500 litres of fuel "or else the work he's doing will stop". Ex. P00846 (confidential), p. 1. Through the switchboard operator, the Zvornik Brigade Duty Officer was then connected to one of the intelligence officers of the Drina Corps Command, Major Golić, to repeat Popović's request for 500 litres of fuel to be sent immediately. The intercepted conversation records that a fuel tank from the vehicle battalion was to go to Pilica village. Ex. P00846 (confidential), p. 2. *See also* Ex. P01459, p. 85. Noting in particular that Kula School is in Pilica village, the Chamber accepts the testimony of Richard Butler that this fuel was intended to be used to transport the Bosnian Muslim men from the school in Kula to Branjevo Military Farm. Richard Butler, T. 16751–16752 (18 July 2011), T. 16815–16822, 16828–16831 (19 July 2011); Ex. P02548; Ex. P02549. *See also* Stefanie Frease, T. 5047–5048 (7 September 2010); Ex. P01860 (indicating the location of Branjevo Military Farm with a red circle). Intercepts reveal that Popović was still in the Zvornik area on the evening of 16 July and around midday on 17 July. Ex. P02550; Ex. P02863 (confidential); Ex. P00651; Ex. P00378a; Ex. P00378b (confidential); Ex. P00379a; Ex. P00379b (confidential); Ex. P02553. In an intercepted conversation at 9:16 p.m. on 16 July and at 4:22 p.m. on 17 July Popović refers to the completion of a "job". In light of his actions during the period 13–16 July, this "job" may well have been been the killing operation in the Zvornik area, but the evidence is not sufficient for the Chamber to make a finding to this effect. Ex. P02550; Ex. P02863 (confidential); Ex. P02553.

2157 Jevto Bogdanović, Ex. P01669, T. 11323–11324, 11339, 11344 (10 May 2007).

2158 The Chamber notes that both PW-073 and PW-016 testified that some of the younger prisoners held at Kula School were taken from the school to be exchanged, and that this may have taken place on the same morning as the transport of prisoners to Branjevo Military Farm. PW-073, Ex. P00048 (confidential), pp. 25, 54–55, 109; PW-016, Ex. P01762, KT. 3039–3040 (14 April 2000). In this regard, the Chamber also notes the evidence of Novica Simić, the Commander of the East Bosnia Corps, who testified that he sent an MP Company under the command of Major Dragiša Vulin to Pilica sometime soon after the fall of Srebrenica to "capture a few people over there" for a prisoner exchange with the ABiH, and that upon his return, Vulin informed Simić that there had been people

However, in view of the evidence discussed above and below in more detail, the Chamber finds that save for a small number who may have been exchanged or transported elsewhere, the vast majority of Bosnian Muslim prisoners held at Kula School were transported to Branjevo Military Farm on the morning of 16 July 1995.

(ii) Killings – Branjevo Military Farm (16 July)

491. On this same morning, Brano Gojković, a member of the Vlasenica platoon of the 10th Sabotage Detachment,[2159] relayed an order given by Commander Milorad Pelemiš to prepare for an assignment in Zvornik.[2160] Eight soldiers of this unit were chosen for the assignment.[2161] On their way to Zvornik from the platoon's base,[2162] the soldiers stopped at an MP guard house close to the exit of the Standard Barracks.[2163] There they were joined by "a lieutenant-colonel" and two MP

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detained in the "school gym in Pilica", and that he had loaded them onto lorries and a bus and transported them to Batković. According to Simić, about 90 prisoners were transported to Batković that day. Novica Simić, Ex. P02756, PT. 28565–28569 (20 November 2008), PT. 28638–28644 (21 November 2008), PT. 28710–28713, 28721–28722, 28734 (24 November 2008). Nebojša Jeremić, a member of the Zvornik Brigade's crime prevention service, testified that at some point after the fall of Srebrenica, from his office at the Standard Barracks, he saw soldiers from what he believed to be the Bijeljina Brigade arrive in trucks with approximately 80–100 Bosnian Muslim prisoners. Jeremić believed that these prisoners had been collected from the Zvornik Detention Unit and heard that they were bound for the Batković Collection Centre. Nebojša Jeremić, T. 6948–6950 (28 October 2010); Nebojša Jeremić, Ex. P01280, PT. 10446 (24 April 2007). Additionally, the Chamber notes the testimony of Jevto Bogdanović that prisoners from the Kula School were taken to "the hall in Pilica," a location the Chamber has referred to throughout the Judgement as the Pilica Cultural Centre. Jevto Bogdanović, Ex. P01669, PT. 11323 (10 May 2007). *See infra* paras. 496–500. The Chamber has heard evidence that as a result of overcrowding at the Kula School, a number of prisoners may have been bused from Kula School to the Pilica Cultural Centre. Richard Butler, T. 16723 (18 July 2011). However, it is unclear on which day this may have occurred, and how many prisoners this may have concerned.

2159 Dražen Erdemović, T. 1912–1913 (17 May 2010).

2160 Dražen Erdemović, Ex. P00215, PT. 10962–10964 (4 May 2007).

2161 Dražen Erdemović, Ex. P00215, PT. 10962 (4 May 2007). These eight soldiers were Dražen Erdemović, Aleksander Cvetković, Brano Gojković, Marko Boskić, one Golijan, Zoran Goronja, Franc Kos, and Stanko Savanović. Erdemović testified that Gojković told the members of the platoon that Commander Pelemiš had ordered him to prepare the men, and for this reason, Erdemović assumed that Pelemiš had told Gojković about the substance of the assignment, and Erdemović thus concluded that Gojković was in charge. Dražen Erdemović, Ex. P00215, PT. 10962–10963 (4 May 2007), PT. 11005 (7 May 2007); Dražen Erdemović, T. 1916 (17 May 2010). *See also* Dragan Todorović, Ex. P02588, PT. 14028–14029, 14038–14045 (21 August 2007). The Chamber notes the evidence of Dragan Todorović that on 15 July, Dragomir Pećanac, together with a number of members of the 10th Sabotage Detachment platoon, namely Franc Kos, Gojković, Selanović, Boris Popov, Marko Boskić and Dražen Erdemović, left the base in Dragaševac, near Vlasenica in a black minivan. Pećanać's vehicle as well as Popović's vehicle also left, although it was not clear to Todorović who was driving Popović's vehicle. He testified that he did not know where these men went that day. When Todorović returned to the base that evening, he saw the minivan in which the group had left that day and assumed they had returned to the base in Dragaševac. He did not see any of these men on the morning of 16 July 1995. He was not aware of any mission they might have gone on that day, but did not see these men when he returned to base in Dragaševac that evening. *See* Dragan Todorović, Ex. P02588, PT. 14028–14029, 14038–14045 (21 August 2007).

2162 The Vlasenica platoon's headquarters were in Dragaševac, a village located about four or five kilometres from Vlasenica. Dragan Todorović, Ex. P02588, T. 13992 (21 August 2007); Dražen Erdemović, Ex. P00215, PT. 10960–10962 (4 May 2007).

2163 The guard house was located at the gate of a compound which was comprised of several buildings. Dražen Erdemović, Ex. P00215, PT. 10964–10965 (4 May 2007); Ex. P00221. The Chamber notes that the guard house depicted in Ex. P00221 is the same guard house depicted in Ex. P01287, which was identified by a member of the MP as being located in front of Standard Barracks. *See* Nebojsa Jeremić, Ex. P01282, PT. 26084–26085 (23 September 2008).

members,[2164] who got into an olive-green Opel Cadet car and led the members of the 10th Sabotage Detachment to a farm situated halfway between Zvornik and Bijeljina,[2165] which Erdemović identified as Branjevo Military Farm,[2166] a plot of land which was under the direct authority and control of the Zvornik Brigade 1st Battalion at the time of the events.[2167] Following a conversation between the lieutenant-colonel and an officer "in military uniform",[2168] the lieutenant-colonel and Gojković told the members of the 10th Sabotage Detachment that buses carrying Bosnian Muslim "civilians from Srebrenica" would soon be arriving and that these civilians were to be "killed that day".[2169] The lieutenant-colonel and the two members of the MP left just as the first bus carrying these Bosnian Muslims arrived at Branjevo Military Farm.[2170]

492. Upon the arrival of the buses of Bosnian Muslims,[2171] soldiers who had gathered around the buses ordered them out and cursed at them.[2172] Referring to these soldiers, PW-073 testified that "you could see death in their eyes".[2173] Three or four soldiers led the Bosnian Muslims down a path towards a meadow,[2174] and PW-073 saw bodies of Bosnian Muslims that had been killed before

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2164 Dražen Erdemović, Ex. P00215, PT. 10964–10970, 10980–10981 (4 May 2007); Ex. P00220. Based on his assumption that the Drina Corps Headquarters were located in Zvornik, Erdemović believed that these men were members of the Drina Corps MP. Dražen Erdemović, Ex. P00215, PT. 10967 (4 May 2007). The Chamber notes, however, that other evidence establishes that the Headquarters of the Drina Corps were actually in Vlasenica. Richard Butler, T. 16814 (19 July 2011), T. 16934–15935 (20 July 2011).

2165 Dražen Erdemović, Ex. P00215, PT. 10966–10970 (4 May 2007).

2166 Dražen Erdemović, Ex. P00215, PT. 10966–10967, 10978–10979 (4 May 2007); Ex. P00223.

2167 Jevto Bogdanović, Ex. P01669, PT. 11317 (10 May 2007); Adjudicated Fact 334. Located in the immediate vicinity of Radivoje Lakić's home, the plot of farmland consisted of three or four hectares of land which were used for military purposes. Jevto Bogdanović, Ex. P01669, PT. 11314, 11317, 11336 (10 May 2007); Ex. P01670. *See also* Ex. P00090.

2168 Dražen Erdemović, Ex. P00215, PT. 10969–10970 (4 May 2007). About four or five people in military uniform were present in a one-storey office building at Branjevo Military Farm where this conversation occurred. *Ibid.*

2169 Dražen Erdemović, Ex. P00215, PT. 10969–10971 (4 May 2007). Erdemović testified that this proposition seemed "unbelievable" to him, and that following exchanges amongst the soldiers, Gojković stated: "If you think that they would not shoot you, give me your rifle and stand in the same line with them." Dražen Erdemović, Ex. P00215, PT. 10971 (4 May 2007).

2170 Dražen Erdemović, Ex. P00215, PT. 10971 (4 May 2007); Dražen Erdemović, Ex. P00215, PT. 10978–10979 (4 May 2007); Ex. P00223 (aerial image of Branjevo Military Farm with markings made by witness indicating, *inter alia*, where buses of Bosnian Muslims arrived).

2171 PW-073 estimated that the buses carrying prisoners from Kula School only travelled for about two and a half kilometres before stopping at a location where the prisoners could hear gunfire. PW-073, Ex. P00048 (confidential), pp. 31, 33. PW-016 testified that the bus he boarded at Kula School drove back along the same road they had driven to get to the school and stopped at a meadow. PW-016, Ex. P01762, KT. 3040 (14 April 2000). *See also* Jean-René Ruez, T. 1018 (30 March 2010), T. 1673 (4 May 2010); Ex. P00094, p. 213.

2172 PW-073, Ex. P00048 (confidential), p. 32. Speaking of the first bus that arrived at Branjevo Military Farm, Dražen Erdemović testified that besides the prisoners and the driver, there were two policemen in VRS uniforms on board. Dražen Erdemović, Ex. P00215, PT. 10971 (4 May 2007).

2173 PW-073, Ex. P00048 (confidential), p. 32.

2174 PW-073, Ex. P00048 (confidential), pp. 32–33; PW-016, Ex. P01762, KT. 3040, 3043 (14 April 2000); Dražen Erdemović, Ex. P00215, PT. 10971–10972 (4 May 2007). *See also* Jean-René Ruez, T. 1019–1020 (30 March 2010); Ex. P00094, pp. 215, 217.

reaching the killing site alongside the path.[2175] When they reached the meadow, soldiers ordered the Bosnian Muslims to stop, turn around with their backs to the soldiers and to lie down.[2176]

493. At Gojković's order,[2177] the soldiers began to shoot at the Bosnian Muslims with automatic rifles.[2178] One of the soldiers suggested that a machine gun be used to speed up the killings; following its use on two groups of ten Bosnian Muslims, the soldiers began to argue amongst themselves because the machine gun was only wounding the Bosnian Muslims, leaving them to beg for someone to kill them.[2179] After the first round of fire, the soldiers asked whether they were any survivors.[2180] Those who answered were shot in the head.[2181]

494. In the early afternoon, eight to ten soldiers from Bratunac, most of whom wore VRS uniforms, joined the eight members of the 10th Sabotage Detachment.[2182] Some of the soldiers from Bratunac knew some of the Bosnian Muslims and abused them by cursing, punching, kicking, and beating them with their rifle butts, as well as with metal bars found at the farm.[2183] The soldiers continued to bring groups of prisoners to the meadow throughout the afternoon of that day.[2184] The killing of Bosnian Muslims lasted from approximately 10:00 a.m. until 3:00 or 4:00 p.m. on 16 July 1995.[2185] Shortly before the last shootings, the lieutenant-colonel and the two members of the MP

2175 PW-073, Ex. P00048 (confidential), p. 32; Jean-René Ruez, T. 1019–1020 (30 March 2010).

2176 PW-073, Ex. P00048 (confidential), pp. 33–34; Dražen Erdemović, Ex. P00215, PT. 10971–10972 (4 May 2007).

2177 Dražen Erdemović, Ex. P00215, PT. 10972 (4 May 2007). Because the bus drivers "could later be witnesses", Gojković even ordered each of them to kill at least one person, for which purpose they were given a rifle. Dražen Erdemović, Ex. P00215, PT. 10973 (4 May 2007).

2178 Dražen Erdemović, Ex. P00215, PT. 10972, 10978–10978 (4 May 2007); Ex. P00223 (aerial image of Branjevo Military Farm with markings made by Erdemović indicating, *inter alia,* where prisoners were shot); PW-073, Ex. P00048 (confidential), pp. 33–34; PW-016, Ex. P01762, KT. 3040–3041, 3042–3043 (14 April 2000); Ex. P01764. Approximately ten soldiers took part in the killings. PW-016, Ex. P01762, KT. 3043 (14 April 2000); PW-073, Ex. P00048 (confidential), pp. 25–26. *See also* Jean-René Ruez, T. 1019–1020 (30 March 2010); Ex. P00088.

2179 Dražen Erdemović, Ex. P00215, PT. 10973 (4 May 2007). *See also* PW-073, Ex. P00048 (confidential), p. 34.

2180 PW-073, Ex. P00048 (confidential), p. 34.

2181 PW-073, Ex. P00048 (confidential), p. 34. The shooting continued until the soldiers were ordered to shoot each man individually. PW-016 heard a voice saying that they shouldn't shoot people in the heads, "so that their brains wouldn't spill out" but rather to shoot them in the back. He also heard one man begging to be killed and heard soldiers saying that he should be let to suffer and that they would kill him later. PW-016, Ex. P01762, KT. 3041–3042 (14 April 2000).

2182 Dražen Erdemović, Ex. P00215, PT. 10974–10975 (4 May 2007).

2183 Dražen Erdemović, Ex. P00215, PT. 10974–10975 (4 May 2007).

2184 PW-016 testified that prisoners were brought to the meadow into the afternoon, "maybe for about four hours". PW-016, Ex. P01762, KT. 3042–3043 (14 April 2000). The Chamber also notes PW-106's testimony that, as he was lying amongst the bodies on the execution fields on the evening of 16 July 1995, a vehicle arrived and unloaded what he later in the night saw were bodies "of killed men that were brought there". PW-016, Ex. P01762, KT. 3044 (14 April 2000). It is unclear to the Chamber whether this concerned a movement of bodies from the meadow to a central location, or whether it concerned the bodies of individuals killed elsewhere and brought to Branjevo Military Farm on the evening of 16 July.

2185 Dražen Erdemović, Ex. P00215, PT. 10972, 10975 (4 May 2007).

returned to the farm,[2186] by which time the Bosnian Muslims from the last bus were being killed by the soldiers from Bratunac.[2187]

495. On the basis of the respective eyewitness accounts of Dražen Erdemović, who estimated that between 15 and 20 buses arrived at Branjevo Military Farm that day,[2188] and PW-073, who estimated that between 1,000 and 1,500 bodies were lying in the field following the shootings,[2189] the Chamber finds that approximately 1,000–1,500 Bosnian Muslims were shot and killed at Branjevo Military Farm by members of the 10th Sabotage Detachment and VRS soldiers from Bratunac.[2190]

(iii) Killings – Pilica Cultural Centre (16 July)[2191]

496. In the afternoon of 16 July 1995 the lieutenant-colonel who had ordered members of the 10th Sabotage Detachment to execute busloads of Bosnian Muslims arriving at Branjevo Military Farm that day ordered the soldiers who had participated in these executions[2192] to go to the Pilica Cultural Centre[2193] in order to execute the 500 Bosnian Muslim prisoners being kept there.[2194] Erdemović and some of the other members of the 10th Sabotage Detachment refused to follow the

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2186 Dražen Erdemović, Ex. P00215, PT. 10975 (4 May 2007).

2187 Dražen Erdemović, Ex. P00215, PT. 10975 (4 May 2007). In two still images from the Srebrenica Trial Video, Erdemović recognized one of the soldiers from Bratunac who was wearing a bandana and who took part in the killings at Branjevo Military Farm, but Erdemović did not know his name. Dražen Erdemović, Ex. P00215, PT. 10976–10977 (4 May 2007); Ex. P00222; Ex. P00224. This man was later identified by Dobrisav Stanojević as Radenko Tomić, nicknamed Gargija, who was a member of the Bratunac Brigade at the time. Dobrisav Stanojević, Ex. P01264, PT. 12888, 12890, 12898–12899 (19 June 2007); Ex. P01272. While Erdemović did not see Tomić issue any orders, he "was always around when something was going on", and Erdemović therefore gained the impression that he was the leader of the group of soldiers from Bratunac. Dražen Erdemović, Ex. P00215, PT. 10992 (4 May 2007). *See also* Richard Butler, T. 16788 (18 July 2011); Ex. P02471, p. 55.

2188 Dražen Erdemović, Ex. P00215, PT. 10983 (4 May 2007); Dražen Erdemović, T. 1881 (17 May 2010).

2189 PW-073, Ex. P00048 (confidential), p. 36.

2190 The evidence discussed in paragraphs 496–500 suggests that the perpetrators of the killings at the Centre included soldiers from Bratunac who had previously taken part in the killings at Branjevo Military Farm. Further evidence indicates that these soldiers were members of the Bratunac Brigade. *See also* Adjudicated Fact 343.

2191 Paragraph 21.12 of the Indictment alleges that on 16 July 1995, VRS personnel who had participated in the executions at Branjevo Military Farm traveled a short distance to the village of Pilica and worked with other VRS and/or MUP personnel in summarily executing, with automatic weapons, approximately 500 men detained inside the Pilica Cultural Centre.

2192 *See supra* para. 495.

2193 The Pilica Cultural Centre is a one storey hall with an attached two-storey administrative building located in the area of the 1st Battalion of the Zvornik Brigade. Richard Butler, T. 16813 (19 July 2011); Novica Simić, Ex. P02756, PT. 28570 (20 November 2008); Jean-René Ruez, T. 1031, 1034–1035 (30 March 2010); Ex. P00094, pp. 228, 231. *See also* Ex. P00091. It was used as a community hall before the war. Dean Manning, Ex. P01819, PT. 18982 (10 December 2007). While this building was also referred to as the "Pilica Dom" or the "Dom Kulture", the Chamber will refer to it as the Pilica Cultural Centre throughout the Judgement. Despite the fact that the Pilica Cultural Centre was located in the middle of a village, which distinguished it from other VRS detention and killing sites, it was nevertheless selected as a detention site because all other available facilities in the Drina Corps' zone were already full by 16 July 1995. Jean-René Ruez, T. 1032 (30 March 2010). *See also* Ex. P00094, p. 228; Dražen Erdemović, Ex. P00215, PT. 10984 (4 May 2007).

2194 Dražen Erdemović, Ex. P00215, PT. 10982 (4 May 2007); Dražen Erdemovic, T. 1882, 1937 (17 May 2010). The lieutenant-colonel told Erdemović and his colleagues that the prisoners at the Pilica Cultural Centre were trying to break down the door and escape from this location, so they "needed to go there and execute those people". Dražen Erdemović, Ex. P00215, PT. 10982 (4 May 2007).

order, but the soldiers from Bratunac who had arrived at Branjevo Military Farm during the course of the day and had participated in the shootings there volunteered to go.[2195] These soldiers left for the Pilica Cultural Centre together with the lieutenant-colonel and the two members of the MP.[2196] Brano Gojković told Dražen Erdemović and the few members of his unit who had refused to continue with the shootings to meet with the lieutenant-colonel at a coffee bar opposite the Pilica Cultural Centre.[2197]

497. Before leaving Branjevo Military Farm, Dražen Erdemović could hear shots and hand-grenade explosions coming from the direction of the Pilica Cultural Centre, and he continued hearing shots and explosions from that direction once he arrived at the coffee bar.[2198] Erdemović could not see any soldiers at the Centre but saw dead bodies lying around the side entrance.[2199] He also noticed a MUP police checkpoint between the coffee bar and the Pilica Cultural Centre, manned by two or three policemen in blue camouflage uniforms,[2200] carrying automatic rifles and pistols.[2201]

498. The evidence demonstrates that the prisoners inside the Pilica Cultural Centre were shot at from a cabin located at the top of the building which housed a movie projector.[2202] Soldiers also entered the hall from the main door on the side of the building and shot at the prisoners, who tried to take refuge at the rear of the hall and underneath the stage.[2203] Grenades were also thrown at the prisoners in this area.[2204] A member of the Zvornik Brigade's Work Platoon who assisted in removing the bodies from the Pilica Cultural Centre on the next day described seeing a huge pile of

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2195 Dražen Erdemovic, T. 1882, 1936 (17 May 2010); Dražen Erdemović, Ex. P00215, PT. 10982 (4 May 2007).

2196 Dražen Erdemović, T. 1882 (17 May 2010); Dražen Erdemović, Ex. P00215, PT. 10982–10983 (4 May 2007).

2197 Dražen Erdemović, Ex. P00215, PT. 10984 (4 May 2007); Jean-René Ruez, T. 1031 (30 March 2010); Ex. P00094, p. 227.

2198 Dražen Erdemović, T. 1881, 1882, 1937 (17 May 2010); Ex. P00215, PT. 10984 (4 May 2007).

2199 Dražen Erdemović, T. 1937 (17 May 2010); Ex. P00215, PT. 10984–10985 (4 May 2007).

2200 Since MUP officers wore blue camouflage uniforms, the Chamber considers Erdemović's reference to the civilian police to pertain to the MUP, as opposed to the MP. Mile Janjić, T. 8852–8853 (13 December 2010); Dražen Erdemović, Ex. P00215, PT. 10984 (4 May 2007).

2201 Dražen Erdemović, Ex. P00215, PT. 10984–10985 (4 May 2007); Dražen Erdemović, T. 1881 (17 May 2010).

2202 Jean-René Ruez, T. 1034–1036 (30 March 2010); Ex. P00094, p. 234; Ex. P01829, p. 8. Based on the forensic evidence presented, the Chamber is of the view that the Bosnian Muslim prisoners were detained only in the hall of the Pilica Cultural Centre, and thus every reference in this Judgement to the Pilica Cultural Centre as a detention and killing site therefore relate solely to this hall. *See* Jean-René Ruez, T. 1034–1036 (30 March 2010); Ex. P00094, pp. 230–239. *See also* Ex. P01829, pp. 1–16.

2203 Jean-René Ruez, T. 1035 (30 March 2010). Both the rear of the hall and the stage were the farthest locations from the projector cabin. Bloodstains found in the back of the Pilica Cultural Centre indicated that prisoners had been climbing the stairs and had been trying to take refuge at the rear of the room. Jean-René Ruez, T. 1035–1036 (30 March 2010); Ex. P00094, pp. 234, 238-239.

2204 Jean-René Ruez, T. 1036 (30 March 2010); Ex. P00094, p. 239.

corpses in civilian clothes "just lying there scattered all over the place".[2205] Two female bodies were also found amidst the male corpses.[2206]

499. Erdemović, Gojković, and other members of the 10th Sabotage Detachment were in the coffee bar across from the Pilica Cultural Centre together with the lieutenant-colonel when one of the soldiers from Bratunac who had participated in the shootings entered the bar and informed the lieutenant-colonel that "everything was finished".[2207]

500. On the basis of the evidence discussed above, the Chamber finds that Bosnian Serb forces—which either included or were exclusively composed of soldiers from Bratunac—killed approximately 500 Bosnian Muslim men at the Pilica Cultural Centre on 16 July 1995.[2208] There are no known survivors from this location.[2209]

(iv) Burials of Bosnian Muslim Detainees Killed at Branjevo Military Farm and the Pilica Cultural Centre (17 July)[2210]

501. Early in the morning on 17 July, Deputy Commander of the Zvornik Brigade Engineering Company Slavko Bogičević[2211] and desk officer Vojislav Sekanić told Damjan Lazarević to go to Branjevo Military Farm where "a pit was supposed to be dug out to dump the bodies in".[2212] Lazarević arrived at Branjevo Military Farm at around 8:00 or 9:00 a.m.[2213] A BGH-700 excavator[2214] and a ULT-220 loader arrived at the farm shortly thereafter,[2215] operated by soldiers

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2205 Jevto Bogdanović, Ex. P01669, PT. 11330–11332 (10 May 2007).

2206 Jevto Bogdanović, Ex. P01669, PT. 11330 (10 May 2007).

2207 Dražen Erdemović, Ex. P00215, PT. 10985 (4 May 2007); Dražen Erdemović, T. 1868 (17 May 2010); Ex. P00222. Erdemović recognised this soldier as one of the soldiers from Bratunac who had participated in the killings at Branjevo Military Farm on 16 July 1995. Dražen Erdemović, Ex. P00215, PT. 10976–10977, 10985–10986 (4 May 2007); Dražen Erdemović, T. 1868 (17 May 2010); Ex. P00222. *See also supra* n. 2187.

2208 *See also* Adjudicated Facts 342, 343.

2209 Jean-René Ruez, T. 1031 (30 March 2010).

2210 The Indictment alleges that on 17 July 1995, VRS personnel from the Zvornik Brigade Engineering Company buried hundreds of victims of the executions at Branjevo Military Farm, which had taken place on the previous day, in a nearby mass grave. Indictment, para. 21.11. The Indictment further alleges that on 17 July 1995, VRS personnel from the Zvornik Brigade "R" Battalion retrieved the bodies of the victims of the executions at the Pilica Cultural Centre and transported them to Branjevo Military Farm, where they were likewise buried on that same day by members of the Engineering Company of the Zvornik Brigade. Indictment, para. 21.12.

2211 *See supra* para. 148.

2212 Damjan Lazarević, Ex. P01642, PT. 14435, 14459 (29 August 2007). Lazarević was told to go to Branjevo to do "the same job as the previous one", referring to his assignments in Kozluk and Orahovac on 15 and 16 July respectively. Damjan Lazarević, Ex. P01642, PT. 14442–14459 (29 August 2007). On an aerial view of Branjevo Lazarević marked with an "X" the location of the pigsties, where a pit was to be dug to "dump the bodies in", and with a circle the location where the bodies were buried. Damjan Lazarević, Ex. P01642, PT. 14463–14465 (29 August 2007); Ex. P01649; Ex. P01650. *See also* Jean-René Ruez, T. 1043–1044 (30 March 2010); Ex. P00094, p. 249.

2213 Damjan Lazarević, Ex. P01642, PT. 14460 (29 August 2007).

2214 Lazarević described the BGH as a tracked construction machine with a bucket in the front used for digging, with the ability to turn in any direction. Damjan Lazarević, Ex. P01642, PT. 14445 (29 August 2007); Ex. P01646.

2215 Damjan Lazarević, Ex. P01642, PT. 14460, 14472, 14479–14480 (29 August 2007); Cvijetin Ristanović, Ex. P01689, BT. 5389–5390, 5400–5401 (1 December 2003); Cvijetin Ristanović Ex. P01682, PT. 13625

from Lazarević's platoon.[2216] Using the BGH-700 machine, one of the soldiers dug a hole approximately 100 metres from the meadow where the bodies were located.[2217] With the assistance of members of a local utility company who had been sent to Branjevo Military Farm for this purpose,[2218] the ULT machine then collected the bodies.[2219] A group of elderly civilians who were renting out facilities at the farm and working on it,[2220] as well as two or three members of the Zvornik Brigade "rear" battalion who arrived with the group from the public utilities company were also present at the farm.[2221]

502. Also on 17 July 1995, Radivoje Lakić ordered 12 members of the Zvornik Brigade Work Platoon to go to the Pilica Cultural Centre and to load the bodies there onto two trucks parked outside.[2222] Meanwhile, soldiers secured the area to prevent locals from entering.[2223] At the same time, Radislav Pantić ordered Milenko Tomić, a driver who was periodically assigned to work for the VRS and was attached to the "R Battalion" at the Standard Barracks for this purpose,[2224] to proceed to Pilica and then to Kula, where he was to "pick up the military".[2225] On his way to Pilica,

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(10 July 2007); Ex. P01652, p. 17 (an entry in the Zvornik Brigade Daily Orders logbook dated 17 July containing an order to, *inter alia*: "Work with BGH-700 in Branjevo" and "Work with ULT-220 in Branjevo", and "Transport BGH-700 to Branjevo by flat bed"); Ex. P01655, pp. 1–2 (Zvornik Brigade Vehicle Log for a ULT-220 recording that on 17 July, it tanked 100 followed by 70 litres of fuel for "digging trenches in Branjevo", and records that 8.5 hours were spent in Branjevo that day). The Chamber notes that after giving testimony pertaining to Exhibit P01655, Lazarević clarified that the particular ULT-220 described in Exhibit P01655 was not the one actually used in Branjevo on 17 July; instead, a ULT-220 which was the property "of the quarry at Jošanica" was present. Damjan Lazarević, Ex. P01642, T. 14480–14481 (29 August 2007). Although Cvijetin Ristanović, testified that he operated a "G-700" at Branjevo Military Farm on 17 July, he later confirmed that his references to the G-700 were in fact references to the BGH-700. Cvijetin Ristanović, Ex. P01689, BT. 5389–5390 (1 December 2003); Cvijetin Ristanović Ex. P01682, PT. 13625 (10 July 2007). *See also* Cvijetin Ristanović, Ex. P01689, BT. 5400–5401 (1 December 2003).

2216 Damjan Lazarević, Ex. P01642, PT. 14461, 14446 (29 August 2007).

2217 Cvijetin Ristanović, Ex. P01689, BT. 5392–5393 (1 December 2003).

2218 Damjan Lazarević, Ex. P01642, PT. 14459, 14461–11462 (29 August 2007).

2219 Cvijetin Ristanović, Ex. P01689, BT. 5394–5395 (1 December 2003). While Ristanović was digging the pit, a "yellow loader" which he described as a vehicle with four wheels, a big "grab" at the front and a cab for the driver, arrived and headed towards the bodies, although Ristanović stated that he could not see what it was doing with the bodies. Cvijetin Ristanović, Ex. P01689, BT. 5394–5395 (1 December 2003). The Chamber is satisfied, on the basis of the documentary evidence regarding the vehicles present at Branjevo Military Farm on 17 July that the "loader" described by Ristanović was in fact a ULT-220, and that it was being used to pick up bodies in the meadow in order to bury them in the pit dug by Ristanović. *See supra* n. 1903.

2220 Damjan Lazarević, Ex. P01642, PT. 14460–14461 (29 August 2007). *See also* Cvijetin Ristanović, Ex. P01689, BT. 5391–5392 (1 December 2003).

2221 Damjan Lazarević, Ex. P01642, PT. 14462 (29 August 2007). The "rear" battalion was comprised of older people who were not supposed to go to the front lines but remained behind to complete various tasks. *Ibid.*

2222 Jevto Bogdanović, Ex. P01669, PT. 11314, 11326–11329 (10 May 2007). On 17 July, while en route from Branjevo Military Farm to the Pilica Cultural Centre, members of the work platoon observed ten bodies in civilian clothing, which appeared to have been shot, lying by the side of the road. Jevto Bogdanović, Ex. P01669, PT. 11315–11316, 11327, 11339 (10 May 2007). Although they returned to this location on the following day to load the bodies, they were already gone. Jevto Bogdanović, Ex. P01669, PT. 11340 (10 May 2007).

2223 Jevto Bogdanović, Ex. P01669, PT. 11328 (10 May 2007).

2224 Milenko Tomić, Ex. P01710, PT. 20997–20999 (5 February 2008). Although Tomić did not know what the "R" stood for, he testified that whenever he was required by the VRS, he would report to the barracks of the "R-Battalion". Milenko Tomić, Ex. P01710, PT. 20998–20999 (5 February 2008).

2225 Milenko Tomić, Ex. P01710, PT. 21000–21003, 21023 (5 February 2008). An entry dated 17 July in a travel log for a TAM-130 truck recorded the vehicle's route as: "Zvornik–Pilica–Kula–Pilica–Zvornik". Tomić recognised his handwriting beside this entry, as well as Pantić's signature. Milenko Tomić, Ex. P01710, PT. 21009–21013

Tomić encountered a soldier in an old JNA uniform with no insignia or rank who told him to report outside of the Pilica Cultural Centre, and Tomić proceeded to follow him to there.[2226] Tomić then drove two trucks full of bodies from the Pilica Cultural Centre to Branjevo Military Farm,[2227] about three kilometres from the Pilica Cultural Centre.[2228]

503. The evidence demonstrates that the bodies collected from the Pilica Cultural Centre on 17 July were buried at Branjevo Military Farm along with the bodies of those who had been killed at the farm on 16 July 1995.[2229] The burials at Branjevo Military Farm continued throughout 17 July 1995 and carried on into the evening.[2230] Towards the end of September 1995 the bodies initially buried at Branjevo Military Farm were transported away from the site and reburied elsewhere,[2231] as demonstrated by forensic evidence discussed below.

(v) Forensic Evidence

504. The Branjevo Military Farm gravesite,[2232] also known as the Pilica gravesite, was one of the four gravesites associated with the takeover of Srebrenica which were exhumed by the ICTY in September 1996.[2233] Forensic evidence demonstrated that it was a primary gravesite,[2234] and that it

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(5 February 2008); Ex. P01714. *See also* Adjudicated Fact 344; Jean-René Ruez, T. 1036 (30 March 2010); Ex. P00094, p. 240.

2226 Milenko Tomić, Ex. P01710, PT. 21001, 21003, 21007 (5 February 2008). The man told Tomić to park the vehicle next to a side door at the Pilica Cultural Centre. Milenko Tomić, Ex. P01710, PT. 21007 (5 February 2008); Ex. P01711.

2227 Milenko Tomić, Ex. P01710, PT. 21001–21002 (5 February 2008). Tomić testified that upon delivering the second truckload of bodies to Branjevo Military Farm, he saw several corpses lying around. After delivering the second truckload of bodies, Tomić was allowed to return to Zvornik. Milenko Tomić, Ex. P01710, PT. 21002–21003, 21005–21006 (5 February 2008); Ex. P01714 (travel log for his TAM 130 indicating the route as "Zvornik–Pilica–Kula–Pilica–Zvornik" which he confirmed). The Chamber notes that Jevto Bogdanović testified that two yellow "tipper trucks", which were used to carry gravel and similar types of cargo, were parked outside the Pilica Cultural Centre and that he and the other members of the Zvornik Brigade Work Platoon loaded bodies into them. Jevto Bogdanović, Ex. P01669, PT. 11329 (10 May 2007). Milenko Tomić testified, however, that he was the only truck driver sent to Pilica that day from the Standard Barracks, and described the TAM 130 that he was driving as a freight vehicle which was six metres long, 2.3 metres wide, and had a tarpaulin. Milenko Tomić, Ex. P01710, PT. 21009–21010, 21023 (5 February 2008). The Chamber does not exclude the possibility that there were several different vehicles engaged to transport the 500 bodies from the Pilica Cultural Centre to Branjevo Military Farm on 17 July 1995, but cannot make a precise finding regarding how many other trucks were present, or who might have driven them.

2228 *See* Adjudicated Fact 344.

2229 Jean-René Ruez, T. 1036 (30 March 2010); Dušan Janc, T. 1748 (13 May 2010). *See also* Adjudicated Fact 344.

2230 Damjan Lazarević, Ex. P01642, PT. 14463, 14483 (29 August 2007) (testifying that he left Branjevo around 7:00 or 8:00 p.m. that evening and that at this time some bodies still remained unburied); PW-016, Ex. P01762, KT. 3044–3045 (14 April 2000) (testifying that having survived the executions at Branjevo Military Farm, he managed to hide underneath a nearby bridge throughout the next day 17 July and he heard all day the continuous sound of machines moving to and from the execution fields). *See also* Dean Manning, T. 10333–10339 (24 February 2011); Ex. P01931; Ex. P01921; Adjudicated Fact 426.

2231 *See infra* paras. 563–565.

2232 The Branjevo Military Farm gravesite was also known as the "Pilica" gravesite, although the Chamber will use the former term throughout its discussion.

2233 Jose-Pablo Baraybar, Ex. P01067, KT. 3810 (30 May 2000); Ex. P01073, p. 1. *See also* Adjudicated Facts 355, 357. These exhumations were carried out together with a team from PHR. *See also* Adjudicated Fact 427.

2234 Ex. P01073, p. 10. The dimensions of Branjevo Military Farm grave were 28 by approximately six metres, and nearly three metres deep at its deepest point. The bodies discovered in the grave occupied only 14% of its floor, at

had been disturbed prior to the ICTY exhumations.[2235] DNA and other types of analysis by the ICMP, PHR and/or ICRC have resulted in the identification of 137 individuals recorded as missing following the fall of Srebrenica to date.[2236]

505. Where the sex of the bodies could be established, it was found to be male, with an age range of 15–61 years of age.[2237] All but one individual was dressed in civilian clothing.[2238] Religious items indicating affiliation to the Muslim religion were found on five of the men.[2239] A total of 83 ligatures were discovered in the gravesite, 76 of which were still attached to the bodies' wrists and arms, with an additional seven ligatures otherwise closely associated with the bodies.[2240] Two cloth blindfolds were also discovered.[2241] Where the cause of death could be determined, it was determined to be gunshot wounds.[2242] The manner of death for all individuals was concluded to be homicide,[2243] and the minimum time since death was considered to be at least one year.[2244]

506. DNA and other types of forensic evidence established that nine secondary gravesites, Čančari Road 4–12,[2245] all of which were located along Čančari Road, were connected with the primary mass gravesite at Branjevo Military Farm.[2246] Ligatures were found in all but one of the nine associated secondary gravesites and blindfolds were discovered on remains in six of them.[2247]

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the far end of the grave. William Haglund, Ex. P01359, KT. 3751–3752, 3757 (29 May 2000); William Haglund, Ex. P01306, PT. 8908 (15 March 2007); William Haglund, T. 9114 (31 January 2011); Dean Manning, T. 10174 (22 February 2011). *See also* Jean-René Ruez, T. 1042–1044 (30 March 2010); Ex. P00094, p. 248.

2235 Ex. P00170, p. 10. The primary mass grave had been extensively robbed. Dean Manning, T. 10174 (22 February 2011). *See also* Jean-René Ruez, T. 1044 (30 March 2010); Ex. P00094, p. 249; Ex. P01073, pp. 77–78; Adjudicated Fact 357.

2236 Ex. P00170, p. 10. *See also* Ex. P01940 (confidential).

2237 Ex. P01073, p. 55; William Haglund, Ex. P01359, KT. 3754 (29 May 2000); Ex. P01825, p. 43. *See also* Adjudicated Fact 428.

2238 Ex. P01073, p. 61. One of the individuals wore military type trousers, but no military insignia were noted. *Ibid.*

2239 Ex. P01073, pp. 64, 81; Ex. P01825, p. 100.

2240 Ex. P01825, pp. 44, 120–121. *See also* Ex. P01916, p. 12; Ex. P01912, pp. 1–85. *See also* Adjudicated Fact 429.

2241 Ex. P01825, pp. 44, 131; Ex. P01916, p. 12; Ex. P01912, pp. 1–2. *See also* Adjudicated Fact 429.

2242 Ex. P01073, pp. 62–63. Haglund found that of the approximately 115 remains associated with crania and necks, 85 had gunshot wounds to the head and neck; 65 of these individuals had gunshot wounds to the head and the neck, in addition to other regions of the body; and 16 had head or neck wounds as the sole injury. Ex. P01073, p. 63. *See also* Adjudicated Facts 428, 430.

2243 Ex. P01073, pp. 62–63. The report indicated, moreover, that the distribution, number and angle of shots, and other wound features indicated the possible use of "spray"-style shooting, with additional bullet injury. Ex. P01073, p. 63.

2244 Ex. P01073 (Haglund's 1998 report), pp. 80–81. Haglund reported that although, due to a number of factors, estimation of the time of death is not reliable, based solely on fleshed state of the bodies and the relative absence of natural disarticulation of the remains examined, a minimum of one year was deemed plausible, but a longer period of time could not be ruled out. *Ibid.*

2245 Jean-René Ruez, T. 1050 (30 March 2010); Ex. P00094, p. 261; Ex. P00170, pp. 74, 75, 81; Dušan Janc, T. 1849–1853 (14 May 2010).

2246 Jean-René Ruez, T. 1049–1050 (30 March 2010); Ex. P00094, pp. 259, 261. *See also* Ex. P00170, pp. 74, 75, 81; Dean Manning, T. 10174 (22 February 2011).

2247 Ex. P00170, p. 15. Janc's report refers to a sum total of 340 ligatures and 60 blindfolds found in all 13 of the secondary gravesites discovered at Čančari Road, some of which were associated with other primary graves. Ligatures were found in all except Čančari Road 4, while blindfolds were found in Čančari Road 5, 6, 7, 8, 9, 10, and 13. *Ibid.*

507. Although Čančari Road 4, 5, and 6 had been previously associated with the Kozluk killing site based on the findings of green glass in each gravesite, DNA analysis received from the ICMP in February 2010 established that they were actually secondary gravesites associated with Branjevo Military Farm.[2248] Moreover, Čančari Road 7, which is primarily associated with the Kozluk primary gravesite, contained the remains of one individual whose DNA was also found in Čančari Road 11, which is primarily associated with Branjevo Military Farm.[2249] Janc attributed this fact to possible contamination resulting from the use of the same transport means to transport bodies to both sites.[2250] Accordingly, the Chamber concludes that although Čančari Road 7 is linked to Branjevo Military Farm through this DNA connection with Čančari Road 11, in all other respects it is not associated with the primary gravesite in Branjevo and is instead associated with the primary gravesite in Kozluk.[2251] Although no information about or DNA testing of the remains in Čančari Road 8 is available to date,[2252] the gravesite was linked to the Branjevo Military Farm primary gravesite because the body parts of an individual whose identification document and driving licence were found in Čančari Road 8 had been previously identified in the Branjevo Military Farm grave.[2253]

(vi) Conclusions on the Detentions at Kula School and Killings at Pilica Cultural Centre and Branjevo Military Farm

508. DNA evidence linked to the primary gravesite at Branjevo Military Farm and its associated secondary gravesites establishes that 1,656 individuals have been identified as having been killed at Branjevo Military Farm and the Pilica Cultural Centre on 16 and 17 July 1995 respectively.[2254] This total number is comprised of the following sub-totals: 137 individuals from the primary gravesite at Branjevo Military Farm; 178 individuals from Čančari Road 4; 288 individuals from Čančari Road 5; 158 individuals from Čančari Road 6; 210 individuals from Čančari Road 9; 379 individuals from Čančari Road 10; 140 individuals from Čančari Road 11; and 166 individuals from Čančari Road 12. [2255] This number is consistent with and corroborates the Chamber's findings that approximately 1,000–1500 Bosnian Muslims were killed at Branjevo Military Farm on 16 July

[2248] Dušan Janc, T. 1793–1795 (14 May 2010); Ex. P00170, pp. 40–41.
[2249] Ex. P00170, pp. 49, 81.
[2250] Dušan Janc, T. 1853 (14 May 2010).
[2251] The Chamber's conclusion is further supported by the fact that when calculating the sum total of identified individuals for the Branjevo Military Farm primary gravesite and the associated secondary gravesites, Janc did not include the identified individuals of Čančari Road 7, which are instead associated with the Kozluk killings. *See* Ex. P00170, p. 41.
[2252] Ex. P00170, p. 18.
[2253] Dušan Janc, T. 1852–1853 (14 May 2010); Ex. P00170, p. 18.
[2254] Ex. P00170, p. 41.
[2255] Ex. P00170, p. 41.

1995, and that a further 500 Bosnian Muslims were killed at the Pilica Cultural Centre on the same day.[2256]

E. Developments after 16 July involving the Column and its Members

1. Opening a Corridor for the Passage of the Column

(a) Negotiations to Open a Corridor

509. On 14 July 1995, the ABiH 28th Division attacked Bosnian Serb Forces in Gligorovići where VRS units were linked with a MUP company.[2257] Combat ensued, during which a MUP captain, Janković, was captured.[2258] Using Janković's radio, the 28th Division asked to be "allowed through".[2259] The attacks continued throughout 15 July[2260] and Bosnian Serb Forces were being deployed to the Zvornik area to block the approach of a column estimated to include 3,500–4,000 "enemy forces".[2261]

510. At mid-day on 15 July, Obrenović, Borovčanin, Vasić, and some other civilian police officers met at the Standard Barracks.[2262] There, the police officials generally agreed on opening the line to let the column pass through.[2263] A request was made to Miletić at the Main Staff for approval, but he denied the request and ordered that they continue to fight the column.[2264] Vasić attempted to speak to an adviser in the MUP, but was likewise rejected and directed to "[f]ind

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2256 *See supra* paras. 495–500.

2257 PW-057, Ex. P02279 (confidential), PT. 15864 (closed session) (26 September 2007).

2258 PW-057, Ex. P02279 (confidential), PT. 15864 (closed session) (26 September 2007).

2259 PW-057, Ex. P02279 (confidential), PT. 15864 (closed session) (26 September 2007).

2260 Lazar Ristić, T. 9296–9297 (2 February 2011); Lazar Ristić, Ex. P01233, PT. 10146–10147 (17 April 2007); PW-057, Ex. P02279 (confidential), PT. 15868 (closed session) (26 September 2007); Ex. P01335, p. 4. Ristić presumed these actions were to take control of Bosnian Serb trenches that the ABiH had designated as a prospective corridor that could be opened for the passage of the column. Lazar Ristić, T. 9296–9297 (2 February 2011).

2261 Richard Butler, T. 16675–16676 (14 July 2011). *See* Ex. P01335, p. 4. *See also* Ex. P00011 (warning of an approaching column two to three kilometres long and requesting reinforcements); Ex. P02333 (order to return units of the Zvornik Brigade and Podrinje Special Forces Detachment); Ex. P02283 (reporting insufficient forces in the Kamenica village sector); Ex. P01589b (confidential); PW-057, Ex. P02279 (confidential), PT. 16002 (closed session) (28 September 2007).

2262 PW-057, T. 15430 (closed session) (14 June 2011); PW-057, Ex. P02279 (confidential), PT. 16523–16524 (closed session) (17 October 2007). PW-057 was unsure whether Đurić was present. *Ibid.*

2263 Richard Butler, T. 16676 (14 July 2011). *See also* Ex. P01335, p. 4. Butler explained the indication in the report that "[w]e did not like the basic idea" was Borovčanin's way of stating that they disagreed with the ultimate decision taken that day to attack the column. Richard Butler, T. 16676–16677 (14 July 2011).

2264 PW-057, T. 15431 (closed session) (14 June 2011); PW-057, Ex. P02279 (confidential), PT. 15873–15874 (closed session) (26 September 2007). The request was made to the Main Staff because no one could be reached at corps level. PW-057, T. 15431 (closed session) (14 June 2011); PW-057, Ex. P02279 (confidential), PT. 15873 (closed session) (26 September 2007).

soldiers there, raise the air force, and destroy it".[2265] The group then attempted to contact Krstić, who told them not to worry because Pandurević was on his way.[2266]

511. When Pandurević arrived, he requested a briefing on the location of the 28th Division and the general situation of the units along that axis.[2267] Despite reports of "an enormous force",[2268] Pandurević also rejected the proposal to let the column pass[2269] and made plans to direct both military and police units to Zvornik.[2270]

(b) Opening the Corridor (16–17 July 1995)

512. There was fierce fighting from the evening of 15 July to the early morning of 16 July.[2271] During this time, Šemso Muminović, one of the officers in the 24th or 25th Division of the ABiH 2nd Corps, was in contact with Pandurević to negotiate a corridor to allow the column to pass.[2272] Around 10:00 a.m. on 16 July, the ABiH called out for a cease-fire[2273] and battle ceased for about an hour.[2274] An operative from the 28th Division approached the Bosnian Serb front line and asked for an open corridor.[2275] Both parties agreed to a cease-fire, but when they returned to their

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2265 PW-057, Ex. P02279 (confidential), PT. 15874–15875 (closed session) (26 September 2007). *See also* PW-057, T. 15431–15432 (closed session) (14 June 2011).

2266 PW-057, T. 15432 (closed session) (14 June 2011); PW-057, Ex. P02279 (confidential), PT. 15875–15876 (closed session) (26 September 2007).

2267 PW-057, Ex. P02279 (confidential), PT. 15883 (closed session) (27 September 2007); Richard Butler, T. 16676 (14 July 2011).

2268 PW-057, Ex. P02279 (confidential), PT. 15883 (closed session) (27 September 2007).

2269 PW-057, T. 15438–15439 (closed session) (14 June 2011); PW-057, Ex. P02279 (confidential), PT. 15883 (closed session) (27 September 2007).

2270 PW-057, T. 15439–15440 (closed session) (14 June 2011); PW-057, Ex. P02279 (confidential), PT. 15883–15884 (closed session) (27 September 2007).

2271 PW-057, Ex. P02279 (confidential), PT. 15890–15891 (closed session) (27 September 2007). ABiH forces attacked and "practically surrounded" the 4th Battalion, cutting off the road they had used to approach as well as their wire and wireless communication. Around 3:00 or 4:00 a.m. on 16 July, the 28th Division broke through the 4th Battalion's self-propelling battery, taking three self-propelling pieces and turning them against the VRS, escalating the fighting. PW-057, Ex. P02279 (confidential), PT. 15890–15891 (closed session) (27 September 2007); Ex. P00375b (confidential). Ristić was part of a unit that was attacked by the 2nd Corps of the ABiH at around 4:30 a.m. on 16 July. Lazar Ristić, Ex. P01233, PT. 10097 (16 April 2007). *See also* Lazar Ristić, T. 9311 (2 February 2011). Stanišić reported an attack on the left flank of the 6th Battalion; at the same time, the 28th Division was launching an attack from the direction of Srebrenica so at moments his unit was caught in cross-fire from Motovska Kosa and Nezuk. Ostoja Stanišić, Ex. P01074, PT. 11713 (17 May 2007). Both sides sustained casualties. PW-057, T. 15441–15442 (closed session) (14 June 2011). *See also* Richard Butler, T. 16677–16679 (14 July 2011); Ex. P01335, p. 5; Adjudicated Fact 526.

2272 PW-057, Ex. P02279 (confidential), PT. 15893 (closed session) (27 September 2007), PT. 16545–16546 (closed session) (18 October 2007); PW-057, T. 15506–15507 (closed session) (15 June 2011); Lazar Ristić, Ex. P01233, PT. 10150–10151 (17 April 2007) (Ristić only heard the communications on 16 July). *See also* Ex. P01241, p. 13; Stephanie Frease, T. 5234–5235 (13 September 2010). Pandurević first made an offer to allow the civilians to pass and the others to surrender, but this was refused by the commander on the ABiH side. Ex. P00013, p. 1.

2273 PW-057, Ex. P02279 (confidential), PT. 15891 (closed session) (27 September 2007).

2274 Ostoja Stanišić, Ex. P01074, PT. 11713 (17 May 2007).

2275 Lazar Ristić, Ex. P01233, PT. 10155–10156 (17 April 2007); Lazar Ristić, T. 9305–9306 (2 February 2011). This request was relayed to Pandurević who inquired about the ABiH forces. The operative indicated 7,000 soldiers, 3,000 of them armed. PW-057, Ex. P02279 (confidential), PT. 15892 (closed session) (27 September 2007). In his testimony in the present case, PW-057 testified that the operative gave a figure of about 10,000 (two columns of

positions, the 28th Division mounted an even fiercer attack.[2276] Ultimately, Pandurević made an agreement with Muminović to allow the remainder of the armed column to pass safely through the lines into the ABiH-held territory.[2277]

513. The corridor was opened on 16 July 1995 at approximately 1:00 or 2:00 p.m.[2278] A column of Bosnian Muslims, described as one kilometre wide[2279] and one to three kilometres long, passed through from Potočani to Baljkovica, across Jeremica hill in the direction of Nezuk.[2280] The column contained both armed and unarmed persons, men and women.[2281] This "endless" column was witnessed until nightfall.[2282] They were unhindered in their passage.[2283]

514. Pandurević relayed initial information of the column at 1:55 p.m. on 16 July,[2284] but avoided telling superior command for a period of time.[2285] When the passage of the column was communicated to Živanović, he instructed units of the Bosnian Serb Forces to go to the hills above Zvornik to try to stop the column.[2286] Eventually, at 8:00 p.m. on 16 July Pandurević sent a full report to the Drina Corps on the opening of the corridor.[2287]

4,000–5,000 men); PW-057 did not believe this number to be exaggerated. PW-057, T. 15442–15443 (closed session) (14 June 2011).

2276 PW-057, Ex. P02279 (confidential), PT. 15892 (closed session) (27 September 2007).

2277 Ex. P01335, p. 5; Richard Butler, T. 16677–16679 (14 July 2011) (testifying that rather than a humanitarian gesture, this decision was based on the scope of combat activities that had taken place on 15–16 July 1995 and the losses incurred by the VRS). *See also* Dragomir Keserović, T. 14003 (11 May 2011) (stating that due to major losses, the commander of the brigade decided to open the corridor to allow them through to Tuzla).

2278 Lazar Ristić, T. 9305 (2 February 2011); PW-057, T. 15441 (closed session) (14 June 2011). *See also* Srećko Aćimović, T. 9609 (8 February 2011). It was agreed that the corridor would remain open for 24 hours. Lazar Ristić, Ex. P01233, PT. 10157 (17 April 2007); PW-057, Ex. P02279 (confidential), PT. 15895, 15901, 15904 (closed session) (27 September 2007). *See also* Ex. P00832 (confidential). In order to create a corridor to let the column through the 2nd and 3rd platoon of the 1st Company left their trenches and went to the trenches of the 2nd Company near the fields of Poljane. Lazar Ristić, Ex. P01233, PT. 10157 (17 April 2007).

2279 Lazar Ristić, T. 9307 (2 February 2011).

2280 Lazar Ristić, T. 9301–9302 (2 February 2011); Ostoja Stanišić, Ex. P01074, PT. 11713–11714 (17 May 2007); PW-057, T. 15425 (closed session) (14 June 2011).

2281 PW-057, T. 15493–15494 (closed session) (15 June 2011). *See also* Lazar Ristić, Ex. P01233, PT. 10198–10199 (18 April 2007); Lazar Ristić, T. 9306 (2 February 2011). The column had split into two separate columns after the fighting in Džafin Kamen, each with 4,000 to 5,000 people headed by the best fighting units and secured on the flanks by combat units and described as a "combat column". PW-057, T. 15493–15495 (closed session) (15 June 2011). By some estimates there were 7,000–10,000 people in the group and over half were armed. PW-057, Ex. P02279 (confidential), PT. 15897 (closed session) (27 September 2007).

2282 PW-057, T. 15493–15494 (closed session) (15 June 2011); PW-057, Ex. P02279 (confidential), PT. 15896 (closed session) (27 September 2007).

2283 PW-057, Ex. P02279 (confidential), PT. 15896–15897 (closed session) (27 September 2007).

2284 Ex. P00832 (confidential). *See also* Ex. P00350b (confidential); PW-057, Ex. P02279 (confidential), PT. 16013–16015 (closed session) (28 September 2007).

2285 PW-057, Ex. P02279 (confidential), PT. 16546–16547 (closed session) (18 October 2007).

2286 PW-057, T. 15427 (closed session) (14 June 2011).

2287 Ex. P01089.

515. The following day, Muminović requested that the corridor remain open for an additional 24 hours, but Pandurević would only agree to four additional hours—until 6:00 p.m. on 17 July.[2288] The corridor was closed at 5:00 p.m. on 17 July[2289] and the defence lines were re-established.[2290]

516. On the evening of 17 July, three colonels from the VRS Main Staff—Colonel Sladojević, Colonel Trkulja, and Colonel Stanković—spoke with Pandurević at Parlog[2291] about the opening of the corridor.[2292] Despite acting against orders, Pandurević was never sanctioned for his decision.[2293]

2. Continued Searches through the Terrain

517. During the first three or four days after the closure of the corridor on 17 July, the Bosnian Serb Forces intensively combed the territory in order to "cleanse it of the straggler groups" and limit the danger to Bosnian Serb Forces.[2294] On 16 July 1995, Keserović was told by Mladić to go to the area of responsibility of the Bratunac Brigade in order to take command of the units that were blocking and searching the terrain between Bratunac and Besici village above Srebrenica–Konjević Polje–Nova Kasaba; Keserović was to speed up the process in order to complete it within a day or two.[2295] Subsequent VRS and MUP orders were issued accordingly.[2296]

2288 PW-057, Ex. P02279 (confidential), PT. 15904 (closed session) (27 September 2007). That same day, Pandurević requested that Muminović exchange or release prisoners including the police captain Janković, but Janković was not released. PW-057, Ex. P02279 (confidential), PT. 15901 (closed session) (27 September 2007). Other prisoners were released in the exchange. Lazar Ristić, T. 9305 (2 February 2011).

2289 PW-057, Ex. P02279 (confidential), PT. 15904 (closed session) (27 September 2007). *See also* Ostoja Stanišić, Ex. P01074, PT. 11714 (17 May 2007). PW-057 did not know how many Bosnian Muslims were trapped behind Bosnian Serb lines when the corridor closed. PW-057, Ex. P02279 (confidential), PT. 15905 (closed session) (27 September 2007).

2290 Lazar Ristić, Ex. P01233, PT. 10157 (17 April 2007).

2291 The entire valley where the fighting had taken place could be seen from Parlog. PW-057, Ex. P02279 (confidential), PT. 15910 (closed session) (27 September 2007).

2292 PW-057, Ex. P02279 (confidential), PT. 15910–15912 (closed session) (27 September 2007); Ex. P02217. The men were sent by Mladić. Ex. P02217 (an order type-signed by Mladić regarding the mission of Sladojević, Trkulja, and Stanković).

2293 PW-057, Ex. P02279 (confidential), PT. 16659 (closed session) (19 October 2007).

2294 PW-057, Ex. P02279 (confidential), PT. 15905 (closed session) (27 September 2007); Ljubo Bojanović, Ex. P00008a, BT. 11734–11735 (8 July 2004); Ex. P02186 (reporting MP platoons successfully "repell[ing] all enemy attacks from the front" and "blockading and combing of the terrain"); Adjudicated Fact 556. Milenko Todorović testified that Ex. P02186 was "clumsily" drafted and refers to the 35 men re-subordinated to the Zvornik Brigade on 16 July 1995 to carry out combat operations. Milenko Todorović, T. 13208–13210 (21 April 2011).

2295 Dragomir Keserović, T. 13925 (10 May 2011), T. 13942–13945, 13959 (11 May 2011); Ex. P00126, para. 3. Mladić later changed his order to have Keserović simply review the situation and report back to him. Dragomir Keserović, T. 14059–14060 (12 May 2011). *See also* Ex. P02218; Dragomir Keserović, T. 13962 (11 May 2011). Previous searches had been conducted within the zones of the Bratunac Brigade, the Skelani Battalion, and the Milići Brigade pursuant to an order of Krstić. Ex. P02536. *See also* Ex. P01605; Dragomir Keserović, T. 13958–13959 (11 May 2011); Ex. P01602; Ex. P02057; Ex. P01604, p. 1; Adjudicated Facts 148–150.

2296 Ljubo Bojanović, Ex. P00008a, BT. 11734 (8 July 2004) (testifying that he received oral orders from Pandurević to go to the IKM in the morning for further instructions); PW-052, Ex. P01598, PT. 8631–8632 (12 March 2007). *See also* Adjudicated Fact 556 (At a meeting held at the Bratunac Brigade Headquarters on 16 July, part of the MUP force was deployed to search the terrain between Srebrenica and Konjević Polje.).

518. In the morning of 17 July 1995, VRS and MUP units met at the Bratunac Brigade Headquarters in Bratunac.[2297] The search territory was divided[2298] and the orders were to look for killed or wounded VRS soldiers and look out for "enemy" troops.[2299] They were equipped for de-mining and some of the police units had search dogs.[2300] The operation was commanded by Captain Mićo Gavrić.[2301] The orders were carried out[2302] and by the end of the first evening 200 Bosnian Muslims had surrendered, including four children.[2303]

519. The sweeps continued for several days[2304] and fighting with the remaining Bosnian Muslims continued on almost a daily basis until approximately 28 or 29 July.[2305] Some units took prisoners while others did not, simply firing at everything they saw;[2306] some soldiers simply "wanted to take their revenge".[2307]

3. Killings in the Zvornik Area

(a) Near Nezuk

520. On 18 July 1995, approximately 500 Bosnian Muslims from the column that had left Srebrenica gathered in Baljkovica near Nezuk.[2308] However, when VRS soldiers started shooting in the area and calling for them to surrender, a group of approximately ten including PW-018 separated themselves from the others and went into the woods.[2309]

2297 PW-052, Ex. P01598, PT. 8631, 8633 (12 March 2007), PT. 8699 (13 March 2007).
2298 PW-052, Ex. P01598, PT. 8631 (12 March 2007).
2299 Ljubo Bojanović, Ex. P00008a, BT. 11734 (8 July 2004); PW-052, Ex. P01598, PT. 8634 (12 March 2007).
2300 PW-052, Ex. P01598, PT. 8631 (12 March 2007).
2301 PW-052, Ex. P01598, PT. 8699 (13 March 2007). *See also* Ex. P02543.
2302 PW-052, Ex. P01598, PT. 8634 (12 March 2007); Ljubo Bojanović, Ex. P00008a, BT. 11734 (8 July 2004). *See also* Adjudicated Fact 557 (In the morning of 17 July the search commenced in Kravica, moving in the direction of Konjević Polje.)
2303 PW-052, Ex. P01598, PT. 8634 (12 March 2007); Adjudicated Fact 558. The children were put in the care of Gavrić and the rest were transported toward Konjević Polje. PW-052, Ex. P01598, PT. 8634 (12 March 2007).
2304 Ljubo Bojanović, Ex. P00008a, BT. 11735 (8 July 2004).
2305 PW-057, Ex. P02279 (confidential), PT. 15905, (closed session) (27 September 2007), PT. 16023 (closed session) (27 September 2007). *See also* Ljubo Bojanović, Ex. P00008 (confidential), BT. 11742 (8 July 2004); Ex. P02556, p. 1; Ex. P00014, p. 164; Ex. P02534; Ex. P00015c, p. 1; Ex. P00850a, p. 1; Ex. P02699, p. 1; Ex. P02845, pp. 1–2; PW-057, Ex. P02279 (confidential), PT. 16021 (closed session) (27 September 2007).
2306 PW-057, Ex. P02279 (confidential), PT. 15908 (closed session) (27 September 2007). Some prisoners were used for exchanges of Bosnian Serb prisoners. Ljubo Bojanović, Ex. P00008a, BT. 11742–11743 (8 July 2004). On either 20 or 21 July, Pandurević issued an order insisting on complete and proper procedure, resulting in "a little bit more prisoners than before". PW-057, Ex. P02279 (confidential), PT. 15909 (closed session) (27 September 2007).
2307 PW-057, Ex. P02279 (confidential), PT. 15909 (closed session) (27 September 2007).
2308 PW-018, Ex. P01173, KT. 3194–3195 (23 May 2000); Ex. P01176; Ex. P01966. PW-018 left Srebrenica in the column at 2:00 a.m. or 3:00 a.m. on 12 July 1995. PW-018, Ex. P01173, KT. 3188–3189 (23 May 2000).
2309 PW-018, Ex. P01173, KT. 3195–3196 (23 May 2000). When asked to name those with him on 19 July 1995, PW-018 identified nine. PW-018, T. 10811–10814 (private session) (3 March 2011). In the *Krstić* case PW-018 indicated that he was in a group of approximately ten. PW-018, Ex. P01173, KT. 3195, 3196 (23 May 2000); PW-018, Ex. P01172 (confidential), KT. 3210 (private session) (23 May 2000).

521. VRS soldiers captured the group between 12:00 and 12:30 p.m. on 19 July 1995 in an area around Baljkovica; this followed calls to surrender and heavy shooting above their heads.[2310] PW-018 testified that most of the soldiers who captured him had patches on their uniforms with the word "Krajisnici" or something similar written on them[2311] and he thought that some of them had patches bearing the word "Drinski" or the letters "Dre".[2312] Documentary evidence shows that the 16th Motorised Brigade of the 1st Krajina Corps had been assigned to assist the Zvornik Brigade at the relevant time in the general area of Baljkovica.[2313] Based on this, the Chamber is satisfied that the soldiers that PW-018 saw with patches bearing the word "Krajisnici" or something similar were from the 16th Motorised Brigade of the 1st Krajina Corps. However, the Chamber does not find beyond reasonable doubt that those with patches bearing the word "Drinski" or the letters "Dre" belonged to this unit.

522. PW-018 testified that once the Bosnian Muslims were captured, the VRS soldiers "slightly hit" them, but he was beaten the worst, because he had a green shirt on and the VRS soldiers said he was a "true Balija".[2314] PW-018 and the others with him were made to lie down on their stomachs.[2315] Soon after their capture, a man whom the other VRS soldiers called "Stari" arrived.[2316] He appeared to PW-018 to be in charge[2317] and he ordered the Bosnian Muslims to give up all their documents, valuables, and money.[2318] They were then interrogated individually.[2319]

2310 PW-018, Ex. P01173, KT. 3196–3197 (23 May 2000); Ex. P01176.

2311 PW-018, Ex. P01173, KT. 3205–3206, 3222–3225 (23 May 2000). PW-018 said that the soldiers had insignia on a patch on the left arm that was predominately yellow, though there may have been other colours, and that the insignia formed a circle and that "Krajisnici" or something similar was written on it. PW-018, Ex. P01173, KT. 3205 (23 May 2000).

2312 PW-018, Ex. P01173, KT. 3206, 3222–3225 (23 May 2000).

2313 Ex. P02554, p. 1 (a report from the VRS Main Staff dated 15 July 1995 and signed by Major-General Radivoje Miletić stating that the "1st /?Krajina/ Corps Command shall send an infantry company in the course of 16 July 1995" to assist "the 1st Zvornik Infantry Brigade in breaking up and destroying fleeing Muslim groups in the general area of Kamenica"); Ex. P02555, p. 1 (a communication in response to Ex. P02554 from the 1st Krajina Command dated 16 July 1995 and signed by Lieutenant-Colonel Momir Talić directing that the 16th Krajina Motorised Brigade shall despatch an infantry company to the Zvornik area on 16 July by 2:00 p.m. at the latest); Ex. P00835, p. 1 (an interim combat report of the Zvornik Brigade dated 18 July 1995 and signed by Lieutenant-Colonel Vinko Pandurević reporting, *inter alia*, that forces of the VRS including "a company from the Krajina 16th brigade" had "sealed off and searched the terrain in the wider area of Crni Vrh-Pandurica-Križevići as well as completely securing the old and new Zvornik-Crni Vrh roads"); Ex. P02556, p. 1 (a regular combat report of the Zvornik Brigade dated 19 July 1995 and signed by Lieutenant-Colonel Vinko Pandurević stating that all available units including a "company of the 16th Krajina /brigade/" had been organised so as to "cut off and destroy" the remaining Bosnian Muslim Forces); Ex. P02152, p. 1 (a VRS Main Staff order dated 21 July 1995 and signed by Radivoje Miletić which refers to "the 16th kmtbr/Krajina Motorised Brigade/, which was engaged in the composition of the 1st zpbr/Zvornik Infantry Brigade/ in a search of the terrain, blocking and destruction of crashed Muslim forces from Srebrenica in the wide area of the Mount Udrč from 16 to 20 July 1995"); Ex. P00014, p. 151 (entry in the Zvornik Brigade Duty Officer's Notebook for 6:30 p.m. on 16 July stating that a unit from the 16th Krajina Brigade had arrived). *See also* Richard Butler, T. 16854–16857 (19 July 2011); Adjudicated Fact 348.

2314 PW-018, Ex. P01173, KT. 3197 (23 May 2000); PW-018, T. 10803 (3 March 2011). "Balija" is a derogatory term for a Muslim. *See infra* para. 863.

2315 PW-018, Ex. P01173, KT. 3197–3198 (23 May 2000).

2316 PW-018, Ex. P01173, KT. 3198 (23 May 2000) (stating that "Stari" means "the old man").

2317 PW-018, Ex. P01173, KT. 3202 (23 May 2000). After his arrival, Stari gave instructions by radio transmitter that

523. A fifteen or sixteen-year-old boy was first interrogated.[2320] After his interrogation, Stari ordered a soldier with an automatic rifle to take him away.[2321] Following this, a single shot was heard and then the soldier returned.[2322] The second person to be interrogated was another boy, who was disabled from childhood.[2323] After interrogating this boy, Stari again ordered a soldier to take him away.[2324] Once he was taken away, PW-018 heard another single shot.[2325] PW-018 was then interrogated.[2326] Stari once again ordered a soldier to take him away.[2327] PW-018 had to take his time getting up because of the beating that he had received.[2328] As the soldier took him away, PW-018 saw another man who had been shot and was dead.[2329] The soldier shot PW-018 in the left shoulder with his automatic rifle and he fell to the ground.[2330] After he was shot, PW-018 lay only one and a half to two metres away from a VRS soldier but he managed not to show that he was alive despite bleeding and the presence of ants in his mouth.[2331] While he was on the ground, PW-018 was aware of another man being led by a soldier and shot three or four metres away from him.[2332] PW-018 also heard "more of these shots, more of these comments".[2333]

524. When it was dark after the VRS soldiers left, PW-018 saw that he was alone and he called out to see whether anyone else was alive, but nobody responded.[2334] He examined the person next to him and concluded he was dead.[2335] He inferred that he was near ABiH-held territory and eventually made his way to Nezuk.[2336]

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the group of 500 Bosnian Muslim men in the woods "should be finished off". PW-018, KT. 3198, 3203 (23 May 2000).

2318 PW-018, Ex. P01173, KT. 3198 (23 May 2000).

2319 PW-018, Ex. P01173, KT. 3198 (23 May 2000). The interrogations concerned largely the military forces at the disposal of the Bosnian Muslims from Srebrenica. PW-018, Ex. P01173, KT. 3198–3199 (23 May 2000).

2320 PW-018, Ex. P01173, KT. 3198–3199 (23 May 2000).

2321 PW-018, Ex. P01173, KT. 3199 (23 May 2000) (testifying that the boy was taken away at a distance of some four to six metres from the other Bosnian Muslims).

2322 PW-018, Ex. P01173, KT. 3199 (23 May 2000).

2323 PW-018, Ex. P01173, KT. 3199 (23 May 2000).

2324 PW-018, Ex. P01173, KT. 3199 (23 May 2000). The soldier standing with a gun behind the boy said "I wouldn't like to do that now", which PW-018 understood to mean that the soldier refused the "commander's orders"; Stari then told another soldier to take the boy away and the boy was taken about three metres away from the Bosnian Muslims. PW-018, Ex. P01173, KT. 3199–3200 (23 May 2000).

2325 PW-018, Ex. P01173, KT. 3199–3200 (23 May 2000).

2326 PW-018, Ex. P01173, KT. 3200 (23 May 2000).

2327 PW-018, Ex. P01173, KT. 3200 (23 May 2000).

2328 PW-018, Ex. P01173, KT. 3200 (23 May 2000).

2329 PW-018, Ex. P01173, KT. 3200 (23 May 2000) (testifying that he saw that the man was dead by the colour of his skin). It is unclear to the Chamber whether this man was one of the boys or somebody else.

2330 PW-018, Ex. P01173, KT. 3200–3201 (23 May 2000). PW-018 was treated from 20 July to 12 August 1995 for a wound in his left clavicle that was the result of a firearm round. Ex. P01175 (confidential).

2331 PW-018, Ex. P01173, KT. 3201 (23 May 2000).

2332 PW-018, Ex. P01173, KT. 3201–3202 (23 May 2000).

2333 PW-018, Ex. P01173, KT. 3202 (23 May 2000).

2334 PW-018, Ex. P01173, KT. 3201, 3206–3207 (23 May 2000).

2335 PW-018, Ex. P01173, KT. 3207 (23 May 2000) (testifying that he did not have the strength to examine the rest of the bodies).

2336 PW-018, Ex. P01173, KT. 3207 (23 May 2000); Ex. P01176; PW-018, T. 10806–10809 (3 March 2011). Before PW-018 was captured, he saw the defence line which he assumed was the line separating the VRS and the ABiH

525. When asked to name those who were captured with him on 19 July 1995, PW-018 named eight males and described another whose name he did not know.[2337] One of those PW-018 named also survived the shooting.[2338] Two others appear in the most recent list of the Srebrenica missing or dead and their place of disappearance is given as Baljkovica near Nezuk,[2339] but they have not been identified by DNA analysis.[2340] Of the remainder, three have been identified in surface remains in Križevačke Njive[2341] one in surface remains in Tisova Kosa[2342] and another in exhumations at a gravesite at Brezani in Brežljak.[2343] Although all these sites are in the Baljkovica area,[2344] which is near Nezuk,[2345] the differing locations suggest that the persons identified might not have been killed during the incident described by PW-018. Therefore, while the Chamber accepts PW-018's account of the killing which he survived, it is not able to determine the precise number of persons who were killed in the course of the incident. However, the Chamber does find that the two people who were shot before PW-018 and the one who was shot after him were killed in the course of the incident that he describes.[2346]

526. PW-018 does not state whether those responsible for the killings had patches bearing the word "Krajisnici" or the word "Drinski" or the letters "Dre" on their uniforms.[2347] The Chamber is therefore not in a position to determine whether soldiers of the 16th Motorised Brigade of the 1st Krajina Corps carried out the killings, though they did take part in the capture of PW-018 and the other Bosnian Muslims.

527. The Chamber concludes that on 19 July 1995 VRS soldiers killed at least three Bosnian Muslim males they captured near Nezuk.

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and a mosque with a minaret that was not destroyed and which, he said, could therefore not have been in VRS controlled territory. The mosque that he saw was in Nezuk where he eventually arrived. PW-018, T. 10806–10809 (3 March 2011).

2337 PW-018, T. 10811–10814 (private session) (3 March 2011).

2338 PW-018, Ex. P01172 (confidential), KT. 3210–3211 (private session) (23 May 2000).

2339 Ex. P01966.

2340 Ex. P01777 (confidential), pp. 46, 131.

2341 Ex. P01940 (confidential).

2342 Ex. P00167 (confidential), p. 407.

2343 Ex. P00167 (confidential), p. 359.

2344 Križevačke Njive and Tisova Kosa contain surface remains in the Baljkovica area. Ex. P00170, pp. 43–45. Brežljak is near Križevići village, which is also in the Baljkovica area. Ex. P00170, pp. 34, 44.

2345 Ex. P01966.

2346 PW-018, Ex. P01173, KT. 3198–3202 (23 May 2000).

2347 PW-018, Ex. P01173, KT. 3199–3201 (23 May 2000). *Cf.* PW-018, Ex. P01173, KT. 3205 (23 May 2000).

(b) Bosnian Muslim Patients taken from the Milići Hospital

528. On 13 July 1995 14 Bosnian Muslims were admitted to the Milići Hospital.[2348] The next day Dr. Gavrić, Director of the Zvornik Medical Centre,[2349] acting on the orders of the VRS went to the Milići Hospital, collected 11 of these Bosnian Muslims and brought them to the Zvornik Hospital.[2350] All of them had suffered injuries and some were seriously wounded.[2351] They arrived at the Zvornik Hospital together with medical records from the Milići Hospital;[2352] and upon arrival, Dr. Gavrić handed the patients to the care of Dr. Lazarević in the surgical ward.[2353] While they were at the Zvornik Hospital they were guarded all the time.[2354] One of them, Aziz Bećirović, died on 16 July 1995.[2355]

529. On approximately 20 July 1995 the remaining ten Bosnian Muslims were transferred to the Standard Barracks.[2356] They were accommodated in the outpatients' clinic separately from the wounded Bosnian Serb soldiers.[2357] The day after their arrival Obrenović informed the medical team that they were to be exchanged.[2358] He ordered that they should come to no harm and that very

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2348 Richard Butler, T. 16685–16686, 16689–16690 (14 July 2011); Ex. P02533 (confidential). The names of these 14 Bosnian Muslims are listed in the hospital patient logbook and they include the 11 referred to in paragraph 21.15 of the Indictment. Ex. P02533 (confidential), pp. 1–2; Indictment, para. 21.15. *See also* Ex. P01731 (confidential); Ex. P02474.

2349 Jugoslav Gavrić, T. 8397 (2 December 2010); Ex. P01170, p. 2.

2350 Jugoslav Gavrić, T. 8400–8404, 8409 (2 December 2010); Ex. P01169; Jugoslav Gavrić, Ex. P01168, PT. 9114–9115, 9123–9125 (21 March 2007); Ex. P01170, p. 2; Ex. P01731 (confidential); Radivoje Novaković, Ex. P01730, PT. 9035–9036 (20 March 2007); Richard Butler, T. 16685–16689 (14 July 2011); Ex. P01542a (confidential); Ex. P02532, p. 2. The records contained in Ex. P01731 (confidential) relate to 11 patients who were discharged from Milići Hospital on 14 July 1995. Dr. Novaković confirmed that these medical records related to the Bosnian Muslims who were brought to the Zvornik Hospital. Radivoje Novaković, Ex. P01730, PT. 9036 (20 March 2007); Ex. P01732, p. 2. A logbook of the surgical department of the Zvornik Hospital, however, does not list the Bosnian Muslim wounded from the Milići Hospital. *See* Ex. P01438 (confidential). Gavrić does not clearly explain why this is the case, but he states that if a patient is admitted during the night as an emergency, it is possible that the information is not immediately entered into the logbook. Jugoslav Gavrić, T. 8411–8412 (2 December 2010). *See also* Ex. P02474, p. 3. On the totality of evidence, the Chamber therefore finds that the 11 Bosnian Muslims whose details are recorded in Ex. P01731 (confidential) were admitted to the Zvornik Hospital on 14 July. The records on the 11 patients discharged from Milići Hospital correspond to the details given in paragraph 21.15 of the Indictment, except for a slight discrepancy in the year of birth of Izet Halilović and some minor differences in the place of birth. Ex. P01731 (confidential).

2351 Jugoslav Gavrić, T. 8408–8409 (2 December 2010) (testifying that some had life-threatening injuries); Ex. P01731 (confidential).

2352 Radivoje Novaković, Ex. P01730, PT. 9035–9038 (20 March 2007); Ex. P01732, p. 2; Ex. P01731 (confidential).

2353 Jugoslav Gavrić, Ex. P01168, PT. 9115–9116 (21 March 2007); Jugoslav Gavrić, T. 8409, 8411 (2 December 2010); Ex. P01170, p. 2. Novaković testified that Dr. Lazarević said that the Bosnian Muslims would be treated in the surgical ward until they were exchanged. Radivoje Novaković, Ex. P01730, PT. 9036, 9094 (20 March 2007). They were placed in the gynaecology ward. Ex. P01732, p. 2.

2354 Ex. P01732, p. 2. *See* PW-057, Ex. P02279 (confidential), PT. 15914 (closed session) (27 September 2007).

2355 Radivoje Novaković, Ex. P01730, PT. 9039 (20 March 2007); Ex. P01732, p. 2; Ex. P00014, p. 144. He had been in a critical condition and had severe facial injuries. Radivoje Novaković, Ex. P01730, PT. 9039 (20 March 2007); Ex. P01732, p. 2; Ex. P01731 (confidential), p. 34.

2356 PW-057, Ex. P02279 (confidential), PT. 15912–15913 (closed session) (27 September 2007); Ex. P01732, p. 3; Zoran Begović, Ex. P01638, PT. 9148–9149 (21 March 2007); Ex. P01640, p. 2. Dr. Begović, Chief of the Zvornik Brigade Medical Centre, testified that the wounds of the Bosnian Muslims were not life-threatening. Zoran Begović, Ex. P01638, PT. 9146 (21 March 2007).

2357 PW-057, Ex. P02279 (confidential), PT. 15913–15914 (closed session) (27 September 2007); Ex. P01732, p. 3.

2358 Zoran Begović, Ex. P01638, PT. 9134 (21 March 2007); Ex. P01640, p. 3.

good care should be taken of them.[2359] They were guarded by the Zvornik Brigade MP.[2360] Doctors from the Zvornik Hospital continued to treat them daily after their transfer to the Standard Barracks.[2361]

530. In an intercepted conversation at 8:00 a.m. on 23 July Pandurević requested guidance on the prisoners who had been captured, including the wounded ones.[2362] Then in another intercepted conversation five minutes later an unidentified person conveyed a message for Pandurević that Popović would be coming to the Standard Barracks at 5:00 p.m. that day in connection with what he had been talking about.[2363] In light of a vehicle log[2364] the Chamber finds that Popović did go to the Standard Barracks on 23 July to deal with the captured prisoners.

531. Early one morning, after staying at the Standard Barracks for five to seven days, the ten wounded were transported from the clinic.[2365] As far as Dr. Begović was aware, they were taken away without any medical personnel, technicians or doctors from the Zvornik Hospital.[2366] After the Bosnian Muslims had been transported from the clinic, Pandurević told Obrenović that Popović had arrived with an order from Mladić that they should be "liquidated", and that they were "taken from Drago Nikolić and driven away, taken away".[2367]

2359 Zoran Begović, Ex. P01638, PT. 9134, 9143 (21 March 2007).

2360 Zoran Begović, Ex. P01638, PT. 9140 (21 March 2007); Zoran Begović, Ex. P01640, p. 3; PW-057, Ex. P02279 (confidential), PT. 15914 (closed session) (27 September 2007). Begović testified that the Bosnian Muslims were put somewhere that was secured by the MP. Zoran Begović, Ex. P01638, PT. 9140 (21 March 2007). *See also* PW-057, Ex. P02279 (confidential), PT. 15914 (closed session) (27 September 2007) (testifying that "a policeman" was providing security). Begović also stated that the Zvornik Brigade MP was "just next to" where the Bosnian Muslim wounded were placed. Ex. P01640, pp. 3, 7.

2361 Ex. P01732, p. 3.

2362 Ex. P00850a; Richard Butler, T. 16694–16696 (14 July 2011); PW-057, Ex. P02279 (confidential), PT. 15914 (closed session) (27 September 2007) (stating that a few days after their arrival Pandurević requested that the "superior command" resolve the problem of the wounded Bosnian Muslims, explaining that the Brigade was not equipped to look after or guard them).

2363 Richard Butler, T. 16696–16698 (14 July 2011); Ex. P00851b. In an intercept at 8:05 a.m, on 23 July an unidentified person says: "What Vinko and I were just talking about will arrive at your place by 1700 hrs. The boss, Lt. Col. POPOVIĆ, will arrive and say what needs to be done regarding the work we talked about." Ex. P00851b. The message to Pandurević that Popović would be arriving at 5:00 p.m. on 23 July was recorded in the Zvornik Brigade Duty Officer's Notebook. Richard Butler, T. 16699–16700 (14 July 2011); Ex. P00014, p. 177. *See also* PW-057, Ex. P02279 (confidential), PT. 15915 (closed session) (27 September 2007).

2364 Richard Butler, T. 16700–16701 (14 July 2011); Ex. P02535, p. 4 (log for a Golf vehicle apparently assigned to Popović containing the entry "Vlasenica-Zvornik-Vlasenica" for 23 July).

2365 PW-057, Ex. P02279 (confidential), PT. 15915 (closed session) (27 September 2007); Zoran Begović, Ex. P01638, PT. 9134–9135 (21 March 2007); Ex. P01640, p. 3. One day when Dr. Novaković went to the Standard Barracks to see the Bosnian Muslims a soldier told him that they had been taken for an exchange. Radivoje Novaković, Ex. P01730, PT. 9094 (20 March 2007); Ex. P01732, p. 3. Dr. Begović believed that the Bosnian Muslims were taken away at about 5:00 a.m. one morning to be exchanged in Bijeljina. Zoran Begović, Ex. P01638, PT. 9134–9135 (21 March 2007); Ex. P01640, p. 3.

2366 Zoran Begović, Ex. P01638, PT. 9135 (21 March 2007); Zoran Begović, Ex. P01640, p. 3. Begović indicated that the departure of the Bosnian Muslim patients without a medical escort was contrary to standard practice and that their medical records should have accompanied them but did not. Zoran Begović, Ex. P01638, PT. 9147–9148 (21 March 2007).

2367 PW-057, Ex. P02279 (confidential), PT. 15915–15916 (closed session) (27 September 2007).

532. The ten wounded Bosnian Muslims who were taken from the Standard Barracks appear in the most recent list of persons reported as missing or dead after the take-over of Srebrenica, but their remains have not been recovered.[2368]

533. In light of the circumstances relating to their disappearance, the Chamber finds that at some time after 23 July 1995 members of Bosnian Serb Forces killed Mensur Salkić, Behaija Kurtić, Izet Halilović, Behudin Lolić, Huso Salihović, Vahdet Suljić, Remzija Ibišević, Mujo Bečić, Sulejman Begović and Mehmedalija Hamzabegović, all of whom were Bosnian Muslims who had been medically treated at the Standard Barracks.

(c) Near Snagovo

534. A PJP Unit from Ugljevik consisting of about 14 men was deployed to the Snagovo area roughly during the period from 14 to 22 July 1995.[2369] On about 22 July 1995,[2370] this PJP Unit captured a group of Bosnian Muslims.[2371] The group consisted of seven men who had become separated from the column that was retreating from the Srebrenica enclave.[2372]

2368 Ex. P01777 (confidential), pp. 29, 33, 66, 68, 92, 113, 115, 177, 182, 202; Ex. P01940 (confidential). Information on the most recent list of persons reported missing or dead after the take-over of Srebrenica is consistent with the name and date of birth of each victim recorded in paragraph 21.15 of the Indictment, except for a very minor difference for the date of birth of Mehmedalija Hamzabegović. Ex. P01777 (confidential), p. 68. *See also* Ex. P02474, pp. 2–3.

2369 PW-054, Ex. P02053 (confidential), PT. 4078–4079 (private session) (16 November 2006), PT. 4093–4094 (private session), 4097 (private session), 4102–4104 (private session), 4106–4107 (private session), 4155–4157 (private session) (17 November 2006); PW-054, Ex. P02054, PT. 4081 (16 November 2006); Ex. P02058 (confidential). PW-054 testified that his Commander told the PJP Unit to go to the Snagovo area and "clear or cleanse the terrain" and that "not even a fly should get out" and that he understood this to mean killing. PW-054, Ex. P02053 (confidential) PT. 4094 (private session), 4097 (private session) (17 November 2006). On 23 September 2004 PW-054 made a statement containing the same allegation but a few days later on 29 September 2004 he made a further statement denying that his Commander had issued such an order. In his testimony, however, he claimed that this denial was untrue and that it had been made as a result of pressure in the form of threats and promises. PW-054, Ex. P02053 (confidential), PT. 4141–4145 (private session) (17 November 2006); PW-054, T. 11199–11200, 11200–11207 (private session) (14 March 2011); Ex. P02060 (confidential), pp. 3–4; Ex. P02061 (confidential), p. 4. In view of this inconsistency the Chamber cannot make a finding as to the nature of the order issued by PW-054's Commander. PW-054 also testified that after the incident referred to in paragraph 21.15.1 of the Indictment his Commander was angry with him for not having done what had been ordered and that he was victimized as a consequence. PW-054, Ex. P02053 (confidential), PT. 4124–4127 (private session), 4133–4134 (private session) (17 November 2006). Since this evidence is related to the alleged order issued by PW-054's Commander and concerns events after those alleged in the Indictment, the Chamber attaches little probative value to it.

2370 PW-022, T. 1154 (14 April 2010); PW-054, Ex. P02054, PT. 4108 (17 November 2006); PW-054, Ex. P02053 (confidential), PT. 4155 (private session) (17 November 2006); Ex. P02058 (confidential). PW-022 testified that he remembered "very well" that he was captured on 22 July. PW-022, T. 1154 (14 April 2010). The testimony of PW-054 and a relevant MUP document are less precise but broadly consistent with this. PW-054, Ex. P02054, PT. 4108 (17 November 2006); PW-054, Ex. P02053 (confidential), PT. 4102–4104 (private session), 4155 (private session) (17 November 2006); Ex. P02058 (confidential) (letter from the Bijeljina CJB giving lists of policemen who were on assignment between specific dates in July 1995 in the area of the Zvornik CJB).

2371 PW-054, Ex. P02054, PT. 4081 (16 November 2006), PT. 4111–4112 (17 November 2006); PW-022, Ex. P00097, PT. 3963–3965 (15 November 2006). PW-054 indicated that the PJP members were wearing "olive-drab" uniforms. PW-054, Ex. P02054, PT. 4112 (17 November 2006). PW-022 described the Bosnian Serb Forces as armed "soldiers" who wore uniforms. PW-022, Ex. P00097, PT. 3964 (15 November 2006); PW-022, Ex. P00096 (confidential), PT. 3968 (private session) (15 November 2006). He also said that their insignia or emblems had

535. The group had spent 11 days in the woods by the time they were captured;[2373] and at that time there were six in the group because that morning one had left to reconnoitre the terrain and did not return.[2374] At the moment of capture, one of them escaped.[2375] The PJP members tied the hands of the remaining five behind their backs.[2376] They then led them in a column to a place some 200 metres away, where they threw them to the ground and for twenty or thirty minutes beat them with rifle butts, kicked them, and insulted them.[2377] They were then searched.[2378] One of the Bosnian Muslims who did not have any identification or belongings with him gave an incorrect date of birth in order to present himself as a minor.[2379] A PJP member was assigned to be with him all the time, because he was believed to be a minor.[2380]

536. After the capture of the Bosnian Muslims other members of Bosnian Serb Forces wearing the same olive-drab uniforms as the PJP members arrived on the scene.[2381] The PJP member who was assigned to the Bosnian Muslim who presented himself as a minor separated him from the rest of the group[2382] and one of the members of the Bosnian Serb Forces who arrived on the scene shot those that remained in the head.[2383] The PJP members initially restrained the remaining Bosnian

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"Military police" and the town of Ugljevik written on them. PW-022, Ex. P00096 (confidential), PT. 3968–3969 (private session) (15 November 2006). Later in cross-examination he indicated that he was unsure whether they were civilian or military police. PW-022, Ex. P00096 (confidential), PT. 3996 (private session) (15 November 2006).

2372 PW-022, Ex. P00097, PT. 3958–3961 (15 November 2006); PW-054, Ex. P02054, PT. 4113 (17 November 2006). PW-022 named five of the six others that he was with. PW-022, Ex. P00097, PT. 3959–3961 (15 November 2006).

2373 PW-022, Ex. P00097, PT. 3963 (15 November 2006).

2374 PW-022, T. 1154 (14 April 2010); PW-022, Ex. P00097, PT. 3963–3964 (15 November 2006).

2375 PW-022, Ex. P00097, PT. 3966 (15 November 2006). PW-022 said that the man who escaped at the moment of capture, "managed to throw himself in a nearby bush". *Ibid.*

2376 PW-022, Ex. P00097, PT. 3964–3965 (15 November 2006). PW-054 said that he saw three Bosnian Muslims but that other PJP members saw four. PW-054, Ex. P02054, PT. 4113 (17 November 2006). Since PW-022's contact with the group was not limited to the point of capture and he was able to provide more specific information about the Bosnian Muslims who were captured, the Chamber will rely on his evidence on this point. PW-022, Ex. P00097, PT. 3959–3961, 3963–3964, 3966 (15 November 2006); PW-022, Ex. P00096 (confidential), PT. 3964–3965 (private session) (15 November 2006).

2377 PW-022, Ex. P00097, PT. 3964–3967 (15 November 2006). PW-022 said that there was "moaning, blood pouring out of noses, crying." PW-022, Ex. P00097, PT. 3966 (15 November 2006). PW-022's account of the beatings and insults during 20 to 30 minutes was put to PW-054 and he said that this did not "tally" with what he saw. PW-054, Ex. P02053 (confidential), PT. 4231–4232 (private session) (20 November 2006). However, the Chamber accepts PW-022's account on this point. PW-054 implied that the Bosnian Muslims begged for their lives. PW-054, Ex. P02054, PT. 4113 (17 November 2006).

2378 PW-022, Ex. P00097, PT. 3966–3967 (15 November 2006).

2379 PW-022, Ex. P00097, PT. 3966–3967 (15 November 2006); PW-022, Ex. P00096 (confidential), PT. 3968 (private session) (15 November 2006).

2380 PW-022, Ex. P00096 (confidential), PT. 3969 (private session) (15 November 2006); PW-054, Ex. P02054, PT. 4114 (17 November 2006). PW-022 gave the surname of this member of the Bosnian Serb Forces. PW-022, Ex. P00096 (confidential), PT. 3969 (private session) (15 November 2006). Also, PW-054 was able to name the Bosnian Muslim who was believed to be a minor. PW-054, Ex. P02054, PT. 4114–4116 (17 November 2006); PW-054, Ex. P02053 (confidential), PT. 4117–4118 (private session) (17 November 2006).

2381 PW-022, Ex. P00097, PT. 3966 (15 November 2006); PW-054, Ex. P02054, PT. 4112 (17 November 2006), PT. 4171, 4179 (20 November 2006).

2382 PW-022, Ex. P00097, PT. 3969–3970 (15 November 2006); PW-054, Ex. P02054, PT. 4114 (17 November 2006).

2383 PW-022, Ex. P00097, PT. 3969–3970 (15 November 2006); PW-054, Ex. P02054, PT. 4114–4115 (17 November 2006), PT. 4171–4172 (20 November 2006).

Muslim with handcuffs.[2384] He stayed with the PJP members for two days and nights and they gave him food.[2385] Then he was taken in a bus with other PJP members to the Ugljevik SJB,[2386] where a man wearing a camouflage uniform beat and slapped him for 10 to 15 minutes in the course of an interrogation.[2387] Afterwards he was transferred in a police car to the Batković Collection Centre.[2388]

537. The names are known of all but one of those that were in the group of Bosnian Muslims just before the moment of capture.[2389] Of these, three appear in the most recent list of persons reported missing or dead after the take-over of Srebrenica and one of them is linked to remains at a gravesite in Snagovo.[2390]

538. The Chamber concludes that on or about 22 July 1995 in the area of Snagovo members of Bosnian Serb Forces[2391] captured five Bosnian Muslim men who had become separated from the column and killed four of them.

(d) Four Bosnian Muslims who Survived the Events at Branjevo Military Farm

539. In the days following the fall of Srebrenica two VRS soldiers, Neško Đokić and his son Slobodan, were arrested for having assisted the enemy.[2392] When questioned, the son Slobodan said that he and his father had given food and clothing to four Bosnian Muslims and had tried to help them cross to ABiH held territory.[2393] The 1st Battalion of the Zvornik Brigade captured the Bosnian Muslims.[2394] Their names were Almir Halilović, Sakib Kivirić, Emin Mustafić, and Fuad Đozić[2395] and they were survivors of the killings at Branjevo Military Farm.[2396]

2384 PW-054, Ex. P02054, PT. 4115 (17 November 2006); PW-054, Ex. P02053 (confidential), PT. 4121 (private session) (17 November 2006); PW-022, Ex. P00097, PT. 3970 (15 November 2006).

2385 PW-022, Ex. P00097, PT. 3970 (15 November 2006); PW-054, Ex. P02053 (confidential), PT. 4121–4122 (private session), (17 November 2006), PT. 4185 (private session) (20 November 2006); PW-054, Ex. P02054, PT. 4183–4184 (20 November 2006).

2386 PW-022, Ex. P00097, PT. 3973 (15 November 2006); PW-022, Ex. P00096 (confidential), PT. 3974 (private session) (15 November 2006); PW-054, Ex. P02053 (confidential), PT. 4123–4124 (private session) (17 November 2006).

2387 PW-022, Ex. P00096 (confidential), PT. 3975 (private session) (15 November 2006).

2388 PW-022, Ex. P00096 (confidential), PT. 3975 (private session) (15 November 2006).

2389 PW-022, Ex. P00097, PT. 3959–3961, 3963–3964 (15 November 2006); PW-022, Ex. P00096 (confidential), PT. 3965 (private session) (15 November 2006).

2390 Ex. P01777 (confidential), pp. 75–76, 118.

2391 The Chamber is not satisfied beyond the reasonable doubt that the perpetrators were MUP forces, as alleged in paragraph 21.15.1 of the Indictment.

2392 Nebojša Jeremić, Ex. P01280, PT. 10426–10427, 10435 (24 April 2007); PW-057, Ex. P02279 (confidential), PT. 15916 (closed session) (27 September 2007).

2393 Nebojša Jeremić, Ex. P01280, PT. 10428 (24 April 2007). *See also* Ex. P01295, p. 1; Ex. P01299, p. 1; Ex. P01296, p. 1; Ex. P01291, p. 1; Ex. P01292, p. 1; Ex. P01293, p. 1; Ex. P01294, pp. 1–2.

2394 PW-057, Ex. P02279 (confidential), PT. 15916 (closed session) (27 September 2007).

2395 Nebojša Jeremić, Ex. P01280, PT. 10431–10433 (24 April 2007). *See also* Ex. P01291; Ex. P01292; Ex. P01293; Ex. P01294.

2396 PW-073, Ex. P00048 (confidential), pp. 36–37; PW-057, Ex. P02279 (confidential), PT. 15916–15917 (closed

540. Nebojša Jeremić and Čedo Jović, who were members of the Crime Prevention Service of the Zvornik Brigade MP, took statements from the four Bosnian Muslims on 23 and 26 July 1995.[2397] On 25 July 1995 Drago Nikolić, Chief of Security, signed a ruling ordering three days of detention for Neško and Slobodan Đokić on the grounds that they had discovered "four enemy soldiers of Muslim nationality" and did not report them.[2398] Drago Nikolić informed Vinko Pandurević that he had learned that the four Bosnian Muslims, who were being held in the Detention Unit of the Zvornik Brigade, had "escaped from one of those places in Pilica, from an execution site".[2399] Pandurević responded by asking Nikolić to stay on after the briefing.[2400] A day or two later, the four Bosnian Muslims "just disappeared".[2401]

541. Almir Halilović, Sakib Kivirić, Emin Mustafić and Fuad Đozić are included in the most recent list of persons reported missing or dead after the take-over of Srebrenica, but their remains have not been identified.[2402] In the context of the events taking place since the fall of Srebrenica and in view of the circumstances of their disappearance, the Chamber finds that members of Bosnian Serb Forces killed them on or shortly after 26 July 1995.

4. Other killings

(a) Bišina

542. On 23 July 1995 PW-068 drove a minibus to collect five members of the 10th Sabotage Detachment from Dragaševac near Vlasenica, following the orders of Momir Amović, the Chief of Transport of the Drina Corps.[2403] When PW-068 collected the members of the 10th Sabotage

session) (27 September 2007); Ex. P01777 (confidential), pp. 50, 64, 109, 147. PW-073 gives a description of four other survivors of the killings at Branjevo Military Farm that matches the details of the four Bosnian Muslims captured by the 1st Battalion of the Zvornik Brigade. PW-073 said that they appeared to be aged from 16 to 25 and later he heard that they were captured and taken away to Zvornik. One of them told him that he was from "Jagonje village". PW-073, Ex. P00049, PT. 1205–1206 (6 September 2006). The four Bosnian Muslims are recorded in the most recent list of persons reported missing or dead after the take-over of Srebrenica as being aged between 15 and 31 and one of them, Sakib Kivirić, was born in "Jagodnja". Ex. P01777 (confidential), pp. 50, 64, 109, 147; Nebojša Jeremić, Ex. P01280, PT. 10432 (24 April 2007); Ex. P01291, p. 1. In addition, Drago Nikolić said that they had come from an execution site in Pilica. PW-057, Ex. P02279 (confidential), PT. 15916–15917 (closed session) (27 September 2007).

2397 Nebojša Jeremić, Ex. P01280, PT. 10417, 10430–10433 (24 April 2007). *See also* Ex. P01291; Ex. P01292; Ex. P01293; Ex. P01294.

2398 Nebojša Jeremić, Ex. P01280, PT. 10435–10436 (24 April 2007); Ex. P01290.

2399 PW-057, Ex. P02279 (confidential), PT. 15916–15917 (closed session) (27 September 2007).

2400 PW-057, Ex. P02279 (confidential), PT. 15917 (closed session) (27 September 2007).

2401 PW-057, Ex. P02279 (confidential), PT. 15917 (closed session) (27 September 2007).

2402 Ex. P01777 (confidential), pp. 50, 64, 109, 147.

2403 PW-068, T. 1694 (13 May 2010); PW-068, Ex. P00155 (confidential) (15 March 2008), pp. 10, 34–38, 39; PW-074, Ex. P00629 (confidential), pp. 10–12, 14. PW-068 testified that the men who were collected were "maybe" from the 10th Sabotage Detachment. PW-068, Ex. P00155 (confidential) (15 March 2008), p. 38. They were armed with rifles and wore black hats and camouflage uniform of a "kind of dark brown, various colours, dark green like leaves." PW-068, Ex. P00155 (confidential) (15 March 2008), pp. 47, 54. PW-068 stated that he had heard that the soldiers he collected were a Muslim, a Croat, and three or four Serbs. PW-068, Ex. P00155 (confidential), p. 38. There were Croats and Muslims in the 10th Sabotage Detachment. Dražen Erdemović, Ex.

Detachment, they instructed him to drive to Bišina.[2404] He then drove them to the Command of the Battalion of the Šekovići Brigade in Bišina where they left the minibus.[2405] After some hours the members of the 10th Sabotage Detachment returned and PW-068 drove them back to Dragaševac.[2406] PW-068 made the journey to and from Bišina under the overall authority of Popović.[2407]

543. On the same day[2408] Ratko Vujović, Commander of the Drina Corps MP Battalion, ordered three members of the MP Battalion to take a lorry and collect some Bosnian Muslim prisoners from Sušica prison for an exchange.[2409] After the prisoners were loaded onto the lorry at Sušica prison, they set off for Šekovići.[2410] Another lorry and a passenger-vehicle formed a column with them.[2411] The column stopped near a restaurant between Tišća and Šekovići where an army unit loaded more prisoners.[2412] By this point, the vehicle driven by PW-068 containing the five soldiers from the 10th Sabotage Detachment had joined the column.[2413] Popović was at Bišina, when the column arrived there.[2414]

544. The members of the MP Battalion were ordered to position themselves around the lorries in order to provide security.[2415] Then the five soldiers from the 10th Sabotage Detachment gathered

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P00215, PT. 10933–10934 (4 May 2007). The Vlasenica Platoon of the 10th Sabotage Detachment was based in Dragaševac. Dražen Erdemović, Ex. P00215, PT. 10931–10932, 10933–10934, 10960–10961 (4 May 2007); Dragan Todorović, Ex. P02588, PT. 13992 (21 August 2007). On the basis of the totality of the evidence, the Chamber finds that the men PW-068 collected were soldiers from the 10th Sabotage Detachment. PW-068 does not say precisely how many soldiers he collected at Dragaševac. PW-068, Ex. P00155 (confidential), p. 38. However, on the basis of the evidence of PW-074, the Chamber finds that he collected five. PW-074, Ex. P00629 (confidential), pp. 10, 11–12, 14.

2404 PW-068, T. 1694 (13 May 2010).

2405 PW-068, Ex. P00155 (confidential) (15 March 2008), pp. 33–34, 40–41, 58–60; PW-068, T. 1695 (13 May 2010).

2406 PW-068, Ex. P00155 (confidential) (15 March 2008), pp. 49, 59–61; PW-068, T. 1695 (13 May 2010).

2407 PW-068, Ex. P00155 (confidential) (15 March 2008), pp. 39–40; Ex. P00157 (confidential), p. 2. PW-068 explained that although Popović's name was written on the vehicle log for that day, the person who directly gave him the order was not Lieutenant Colonel Popović and that Momir Amović instructed PW-068 to write down Popović's name on the log so that Popović would approve it at a later date. PW-068, Ex. P00155 (confidential) (15 March 2008), pp. 39–40. Kathryn Barr, a handwriting analysis expert, testified that there was strong evidence that Popović produced the signature on the vehicle log for that day. Kathryn Barr, T. 10905–10906 (7 March 2011); Ex. P01969, pp. 3–5. On the basis of the evidence, the Chamber is satisfied that PW-068 made the journey under the overall authority of Popović.

2408 PW-074, Ex. P00629 (confidential), pp. 9, 16, 18–19; Ex. P00634 (confidential), p. 2. PW-074 indicated that the entry in the vehicle log for 23 July 1995 corresponded to the journey made on that day. PW-074, Ex. P00629 (confidential), pp. 9, 16–19; Ex. P00634 (confidential), p. 2.

2409 PW-074, Ex. P00629 (confidential), pp. 5–6, 9.

2410 PW-074, Ex. P00629 (confidential), p. 9. The vehicle log indicates that there were 15 people in the lorry. Ex. P00634 (confidential), p. 2.

2411 PW-074, Ex. P00629 (confidential), p. 9.

2412 PW-074, Ex. P00629 (confidential), pp. 9–10.

2413 PW-074, Ex. P00629 (confidential), pp. 9–10, 11–12, 14. PW-074 testified that the five men acted as a group and some of them bore the insignia of the 10th Sabotage Detachment. PW-074, Ex. P00629 (confidential), p.14. The Chamber finds that the five men that PW-074 testified that he saw were the five members of the 10th Sabotage Detachment that PW-068 collected and drove to Bišina. *See supra* para. 542.

2414 PW-074, Ex. P00629 (confidential), pp. 11, 14.

2415 PW-074, Ex. P00629 (confidential), p. 11.

five prisoners from the lorries, took them about 30 metres away and shot them.[2416] This procedure was repeated swiftly: the prisoners were taken in groups of five to be shot.[2417] Immediately after the killings were finished, the five soldiers left and a construction machine was brought in to dig a hole for the bodies.[2418] Popović was the most senior officer present while the killings were taking place, and he organised the burial of the bodies.[2419]

545. Between 20 May and 7 June 2006 a gravesite was exhumed in Bišina and 54 Bosnian Muslims from Srebrenica, including one called Himzo Mujić, have been identified there.[2420] Telephone intercepts from 24 July 1995 indicate that at the time of the killings Himzo Mujić was taken from Sušica prison and that Popović had knowledge of his new whereabouts and what had happened to him.[2421] On the basis of the evidence of the events of July 1995 and what was later discovered in the gravesite and the connection provided by Himzo Mujić between the two, the Chamber finds that the gravesite exhumed in Bišina in 2006 contains those killed by soldiers of the 10th Sabotage Detachment on 23 July 1995.

546. The Chamber concludes that soldiers from the 10th Sabotage Detachment acting under Popović's supervision killed a number of Bosnian Muslims in Bišina on 23 July 1995. Paragraph 21.15.2 of the Indictment alleges that the number killed in Bišina was "approximately 39". The Chamber, however, finds that 54 Bosnian Muslims were killed in Bišina. The Chamber nevertheless considers that to the extent that this figure exceeds the one given in paragraph 21.15.2 of the Indictment, it lies outside the scope of what is alleged in that paragraph and accordingly does not form any part of the case against the Accused.

2416 PW-074, Ex. P00629 (confidential), pp. 11–12.

2417 PW-074, Ex. P00629 (confidential), p. 12.

2418 PW-074, Ex. P00629 (confidential), pp. 12–13.

2419 PW-074, Ex. P00629 (confidential), pp. 12–14, 24, 37.

2420 Ex. P00170, pp. 31–32; Dušan Janc, T. 1764–1766 (private session) (13 May 2010), T. 1770–1771 (private session) (14 May 2010); Ex. P00169 (confidential), p. 2; Ex. P00167 (confidential), pp. 339–341; Ex. P01940 (confidential). *See also* Dušan Janc, T. 1771–1772 (14 May 2010); Ex. P00163, pp. 17, 64; Ex. P00162a, p. 2. There were 18 ligatures and 4 blindfolds in the grave. Ex. P00170, p. 31. As of February 2010, a total of 39 Srebrenica victims had been identified in exhumations at Bišina. Ex. P00170, pp. 2–3, 32; Ex. P00167 (confidential), pp. 339–341. However, the most recent data on DNA matching covering the period up to November 2010 identifies a further 15 persons from the gravesite in Bišina and for all of these 15 the ICMP issued match reports in April, May and June 2010. Ex. P01940 (confidential). *Cf.* Thomas Parsons, T. 10397–10398 (24 February 2011).

2421 Ex. P00162a (telephone intercept on 24 July 1995 at 11:32 a.m. in which "Kane" at Han Pijesak says that Himzo Mujić who is in prison and hopes to be exchanged wishes to speak to "Jovičić" who he used to work for and later in the conversation Popović is mentioned); Ex. P00664b (confidential) (telephone intercept on 24 July 1995 at 12:50 p.m. in which one unidentified speaker says that "Kane" should be told that Himzo Mujić is not in prison anymore and that Popović "is the only one who knows where he went from here and what happened to him".) Nikodin Jovičić, at the time Deputy Commander of the Han Pijesak SJB, testified that he believed that he was the "Jovičić" referred to in the conversation recorded in Ex. P00162a. He also stated that the Commander of the Han Pijesak SJB was called Goran Kanostrevac and known as "Kane", though he does not recall any conversation with him about Himzo Mujić. Nikodin Jovičić, Ex. P00161 (17 March 2008), pp. 2–3; Nikodin Jovičić, T. 1711 (13 May 2010). In light of Jovičić's testimony, the Chamber finds that "Kane" in Ex. P00162a and Ex. P00664b is Goran Kanostrevac.

(b) Near Trnovo

547. The Scorpions Unit was based in Đeletovci in what was then called the Republic of Serb Krajina.[2422] During the summer of 1995 the Unit was deployed from Đeletovci to Trnovo,[2423] where it operated under the direction of Bosnian Serb Forces.[2424] At this time Slobodan Medić a.k.a. Boca was the Commander of the Unit.[2425]

548. After the fall of Srebrenica, while the Scorpions Unit was deployed in Trnovo, Medić received an order through his chain of command to provide vehicles to go to Srebrenica and, as a result, six Bosnian Muslims who were subsequently killed were collected by bus.[2426]

549. Medić ordered Slobodan Stojković, a member of the Scorpions Unit, to film the killing of the six Bosnian Muslims.[2427] Stojković confirmed that he recorded the video that showed the

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2422 PW-078, T. 15661 (closed session) (20 June 2011); Slobodan Stojković, T. 8315–8316 (1 December 2010). Đeletovci is not far from the border with the Republic of Serbia. PW-078, T. 15664 (closed session) (20 June 2011). Today it is in the Republic of Croatia. Slobodan Stojković, T. 8316 (1 December 2010). PW-078 testified that the Commander of the Scorpions Unit received orders from Milovan Milovanović, a.k.a. Mrgud, who he described as the Minister of Police of the Serbian Republic of Krajina. PW-078, T. 15676, 15706–15708 (closed session), 15723–15729 (closed session) (20 June 2011). Janc testified that the Scorpions Unit was part of the MUP of the Republic of Serbia. Dušan Janc, T. 7044–7045, 7047–7048 (29 October 2010). *See also* Dušan Janc, T. 7848–7850 (17 November 2010); Ex. P01371 (confidential), pp. 6–7. However, PW-078 was unsure whether the Unit was part of the MUP or the Army. PW-078, T. 15728–15729 (closed session) (20 June 2011). A Judgement of the War Crimes Chamber of the Belgrade District Court of 10 April 2007 concerning the events alleged in paragraph 21.16 of the Indictment found that the Scorpions Unit was for a time part of the MUP of the Serbian Republic of Krajina, but operated as part of its Army at the time of its deployment in Trnovo. Ex. P01437, pp. 3, 125, 127. A report dated 1 July 1995 by Ljubiša Borovčanin, Deputy Commander of the RS Special Police Brigade, refers to a combat group that included "'Škorpija'/Scorpion/(Serbian MUP)". Dušan Janc, T. 5803–5805 (23 September 2010); Ex. P01025, p. 1. On 10 July 1995 the RS MUP ordered the withdrawal of the company of "joint RSK /Republic of Serbian Krajina/, Serbian and RS MUP forces from the Trnovo battlefield". Ex. D00129; Dušan Janc, T. 7044–7045 (29 October 2010), T. 7353–7356 (4 November 2010). A further report by Borovčanin covering the period 12–20 July 1995 makes no mention of the MUP of the Republic of Serbia, but does refer to "the MUP of the Republic of Serbian Krajina". Ex. D00130, p. 1; Dušan Janc, T. 7054–7055 (29 October 2010), T. 7335–7342 (4 November 2010). In view of PW-078's testimony, Ex. P01437 and the location of Đeletovci in the Serbian Republic of Krajina, the Chamber finds that the Scorpions Unit was part of the security apparatus of the Serbian Republic of Krajina; however Ex. P01025 suggests that at the time of the deployment of the Unit in Trnovo it may also have been connected organizationally in some way with the MUP of Serbia.

2423 PW-078, T. 15664 (closed session) (20 June 2011); Slobodan Stojković, T. 8315–8316, 8321, 8323–8328 (1 December 2010).

2424 PW-078, T. 15665, 15677, 15723 (closed session) (20 June 2011); Slobodan Stojković, T. 8322 (1 December 2010); Ex. D00130, p. 1. *See also* Ex. P01025. PW-078 said at one point that at the time of the deployment of the Scorpions Unit in BiH its Commander was subordinated to someone in the VRS, but later said that he did not know this for a fact and he was unsure of the precise relationship with Bosnian Serb Forces. PW-078, T. 15677, 15723 (closed session) (20 June 2011). A report by Borovčanin implies that the Scorpions Unit was under the control of the RS Ministry of the Interior during its deployment in the Srebrenica operation in July 1995. Ex. D00130, p. 1. *See also* Ex. P02516.

2425 Slobodan Stojković, T. 8319 (1 December 2010).

2426 PW-078, T. 15693–15702, 15712 (closed session) (20 June 2011); Ex. P02416 (confidential), p. 3. PW-078 had previously stated that members of the Scorpions Unit were driving a bus and truck back and forth to Srebrenica, bringing captured Bosnian Muslims to different locations to be killed. PW-078, T. 15693 (closed session) (20 June 2011); Ex. P01371 (confidential), p. 11. PW-078 corrected this statement and said that he did not know how many such journeys were made. PW-078, T. 15693–15695, 15712 (closed session) (20 June 2011); Ex. P02416 (confidential), p. 3. Janc testified that he did not know where exactly the victims were captured and that there were no records on the route by which they were brought down to the Trnovo area. Dušan Janc,

killings.[2428] Throughout the video the members of the Scorpions Unit, including the Commander Slobodan Medić, can be heard insulting the Bosnian Muslims.[2429] The Bosnian Muslims are first seen in a truck; they show signs of having been beaten and their hands are bound.[2430] While they were in the truck a member of the Scorpions Unit kicked one of them in the head.[2431] The Bosnian Muslims were subsequently ordered to lie face down on the ground with their hands tied behind their backs.[2432] Members of the Unit then took them into a field near some houses[2433] and first shot four of them.[2434] The remaining two were made to move the bodies of those who had been shot[2435] and then members of the Unit shot them as well.[2436]

550. The six men and boys listed in paragraph 21.16 of the Indictment—Azmir Alispahić, Safet Fejzić, Smajil Ibrahimović, Sidik Salkić, Juso Delić and Dino Salihović—have been identified by DNA analysis of remains recovered at Goďinjske Bare near Trnovo,[2437] where the killings took place.[2438] All six are persons reported as missing or dead after the fall of Srebrenica.[2439] Relatives have identified four of these six in extracts from the video.[2440]

T. 7327–7328 (4 November 2010). Janc also testified that apart from the bodies of the six Bosnian Muslims no other bodies related to the Srebrenica events were found around Trnovo. Dušan Janc, T. 7036 (29 October 2010).

2427 Slobodan Stojković, T. 8314, 8341–8343, 8381 (1 December 2010); Ex. P01437, p. 27. Stojković had received the video-camera from another member of the Unit, Duško Kosanović, after he returned to Đeletovci. Slobodan Stojković, T. 8340 (1 December 2010); PW-078, T. 15669 (closed session) (20 June 2011). When Stojković returned to Đeletovci after the killings, he returned the video-camera and the video-tape with the footage of the killings to Duško Kosanović. Copies were made of the video-tape and eventually one was handed over to the Prosecution. Slobodan Stojković, T. 8381–8382 (1 December 2010); PW-078, T. 15679–15686 (closed session) (20 June 2011). *See also* Dušan Janc, T. 5807, 5819–5820 (private session) (23 September 2010), T. 7296–7302, 7321 (private session), 7322–7328 (4 November 2010), T. 7845–7850 (17 November 2010), T. 8116–8124 (private session) (25 November 2010); Ex. P01023. Janc testified that despite the interruptions the video-tape represented the entirety of what was filmed at the time and that this was confirmed through other witnesses. Dušan Janc, T. 7032 (29 October 2010).

2428 Slobodan Stojković, T. 8361–8362 (1 December 2010); Ex. P01024.

2429 Ex. P01024. *See, e.g.*, Ex. P01024, 00:02:13–00:04:03 (where members of the Scorpions Unit are shown insulting the Bosnian Muslims while they are lying on the ground). *See also* Slobodan Stojković, T. 8374–8378 (1 December 2010).

2430 Slobodan Stojković, T. 8361–8363, 8378 (1 December 2010); Ex. P01024, 00:00:00–00:00:21.

2431 Slobodan Stojković, T. 8361–8262 (1 December 2010); Ex. P01024, 00:00:18–00:00:20.

2432 Slobodan Stojković, T. 8363 (1 December 2010); Ex. P01024, 00:01:55–00:02:16.

2433 Ex. P01024, 00:09:16–00:10:37. *See also* Dušan Janc, T. 5828–5832, 5849–5854 (23 September 2010); Ex. P01137; Ex. P01027.

2434 Ex. P01024, 00:10:58–00:11:32.

2435 Ex. P01024, 00:13:06–00:16:23.

2436 Ex. P01024, 00:16:54–00:18:23.

2437 Dušan Janc, T. 5844–5847, 5847 (private session), 5848 (23 September 2010); Ex. P01026; Ex. P01940 (confidential); Ex. P00167 (confidential), pp. 376–377; Ex. P00170, p. 38.

2438 Dušan Janc, T. 5841–5842 (23 September 2010); Ex. P00170, p. 38. The physical characteristics of the site of the killings as shown in the video match those of the site of the exhumations. Dušan Janc, T. 5827–5836, 5841–5842, 5849–5854 (23 September 2010); Ex. P01137; Ex. P01027; Ex. P01024.

2439 Dušan Janc, T. 5846 (23 September 2010), T. 7034–7035 (29 October 2010); Ex. P01940 (confidential); Ex. P01777 (confidential), pp. 21, 46, 56, 95, 176, 183; Osman Salkić, Ex. P01373 (4 December 2004), p. 4.

2440 Dušan Janc, T. 5845–5846, 5848 (23 September 2010). Osman Salkić identified his brother-in-law, Azmir Alispahić, and his cousin, Sidik Salkić. Osman Salkić, T. 7869–7874 (22 November 2010); Osman Salkić, Ex. P01373 (22 November 2010), pp. 2, 5; Ex. P01374; Ex. P01375; Ex. P01376; Ex. P01377; Ex. P01378. *See also* Dušan Janc, T. 5845–5846 (23 September 2010). Salkić was with Alispahić in the column that headed towards Tuzla when heavy shelling began and they lost each other. Osman Salkić, T. 7869 (22 November 2010);

551. The Chamber finds that following the fall of Srebrenica, the Scorpions Unit, which at the time was operating under the direction of Bosnian Serb Forces, summarily killed six Bosnian Muslim males from Srebrenica near the town of Trnovo.

F. Detentions at Batković

552. The Batković Collection Centre was located approximately ten to 15 kilometres from Bijeljina.[2441] It held ABiH POWs captured by the units of the Eastern Bosnia Corps.[2442] The security of the Batković Collection Centre was entrusted to a part of the MP Battalion of the Eastern Bosnia Corps.[2443] This MP unit was re-subordinated to the commander of the centre, Captain or Major Đoko Pajić,[2444] who was directly responsible to the Eastern Bosnia Corps Commander, Novica Simić.[2445] Logistics requirements of the unit were directed to the MP Battalion Commander, Captain, later Major, Dragiša Vulin.[2446]

553. Upon arrival at Batković, POWs were registered and the ICRC was contacted to participate in the registration process.[2447] POWs were then interviewed by members of the Security and Intelligence Department of the Eastern Bosnia Corps,[2448] in accordance with an instruction forwarded by Popović to the subordinate "Intelligence and Security Organ Heads" of the various brigades of the Drina Corps.[2449]

554. On 12 July 1995,[2450] Milenko Todorović, Chief of Security of the Eastern Bosnia Corps, received information from the Accused that directed the Eastern Bosnia Corps Command to prepare

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Osman Salkić, Ex. P01373 (22 November 2010), p. 4; Dušan Janc, T. 5846 (23 September 2010). Safet Fejzić was identified by his sister. Dušan Janc, T. 5846–5847 (23 September 2010). Smajil Ibrahimović was identified by his wife. Dusan Janc, T. 5845 (23 September 2010).

2441 Milenko Todorović, T. 12940 (18 April 2011). With regard to the layout of the centre, *see* Milenko Todorović, T. 12954–12956 (18 April 2011); Ex. P02180.

2442 Ljubomir Mitrović, T. 15166 (6 June 2011). The centre fell under the administration of the Eastern Bosnia Corps Commission for the Exchange of POWs ("Exchange Commission"); the President of the Commission reported directly to the Eastern Bosnia Corps Commander. Ljubomir Mitrović, T. 15157 (6 June 2011). The Chamber uses "ABiH POWs" in this context to indicate that the centre was used to hold the Bosnian Muslim soldiers as prisoners to be exchanged.

2443 Milenko Todorović, T. 12949–12951 (18 April 2011), T. 13041 (19 April 2011).

2444 Milenko Todorović, T. 12950 (18 April 2011), T. 13083–13084 (20 April 2011); Ex. P02183, pp. 18, 20. Todorović expressed some doubt as to whether in July and August 1995, the Commander was in fact Đoko Pajić, testifying that it may have been Gojko Cekić. Đoko Pajić replaced Gojko Cekić when the latter was moved to another duty station. Milenko Todorović, T. 13084, 13086 (20 April 2011).

2445 Milenko Todorović, T. 12930 (18 April 2011), T. 13083, 13086 (20 April 2011).

2446 Milenko Todorović, T. 12929–12930 (18 April 2011), T. 13041–13042 (19 April 2011).

2447 Milenko Todorović, T. 12958, 12988 (18 April 2011), T. 13088, 13150 (20 April 2011); Ex. D00228 (confidential), p. 9 (indicating that Bosnian Muslims were registered by the ICRC). *See also* PW-073, Ex. P00048 (confidential), p. 45.

2448 Milenko Todorović, T. 12959 (18 April 2011). Members of the Security branch would also take part in interviews with POWs. Milenko Todorović, T. 12959, 12966 (18 April 2011); Ex. P01970, p. 2.

2449 Milenko Todorović, T. 12963, 12968 (18 April 2011); Ex. P01970, p. 1. Milenko Todorović, Chief of Security of the Eastern Bosnia Corps, passed this instruction on to subordinate security organs. Milenko Todorović, T. 12967–12974 (18 April 2011); Ex. P02181.

2450 *See infra* para. 931, n. 3709.

accommodation at the Batković Collection Centre for approximately 1,000–1,300 ABiH soldiers who were to arrive over the next few days.[2451] Todorović immediately conveyed this order to Simić, who took further steps for the preparations.[2452]

555. When the Bosnian Muslim POWs did not arrive, Simić told Todorović to check with the Accused as to when the prisoners would be arriving.[2453] The Accused told him: "[d]rop any further preparations. The task has been abandoned."[2454] Ljubomir Mitrović, the President of the Commission for Exchange of Prisoners and Bodies of the Eastern Bosnia Corps, testified that when the Bosnian Muslim POWs did not arrive, he called the president of the Drina Corps Commission for POW Exchange, who told him that "there would be nothing out of what had been agreed".[2455] From that message, Mitrović interpreted that "something bad was happening".[2456]

556. Records indicate that on 18 July 1995, 22 Bosnian Muslims who appear on a "list of persons to be transferred under guard" were taken to the Batković Collection Centre.[2457] Further, 144 Bosnian Muslim men were transferred to the Batković Collection Centre between 23 and 26 July

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2451 Milenko Todorović, T. 12933–12934, 12938–12939 (18 April 2011) (estimating approximately 1,000 to 1,200); Ljubomir Mitrović, T. 15174 (7 June 2011) (estimating "around 1,300"). *See also* Ex. P02183, p. 37 (in a Prosecution interview with Milenko Todorović, dated 2 February 2010, he stated, "I don't know exact number because I don't have any notes in front of me but I will accept either 1,000, or 1,200 to 1,300").

2452 Milenko Todorović, T. 12934, 12938–12940 (18 April 2011), T. 13133–13134 (20 April 2011); Ex. P02183, pp. 35–36. Two of the buildings of the centre were intended to be used for housing the 1,000–1,200 ABiH prisoners that were expected to arrive; one hangar that already housed about 20–30 ABiH prisoners from the Bihać region. Since the number of expected POWs—1,000–1,200—was larger than the capacity at the centre, preparations had to be undertaken. Milenko Todorović, T. 12940, 12954, 12956–12957 (18 April 2011); Ex. P02180; Ex. P01970. Mitrović testified that by the time, approximately 40 to 60 Bosnian Muslim POWs were held at the hangar in the Batković Collection Centre; the hangar had the capacity to accommodate up to 800 prisoners, so another hangar was to be arranged separately. Ljubomir Mitrović, T. 15183 (7 June 2011). The relatives of the Bosnian Serb POWs waited for the arrival of the 1,300 prisoners and their arrival would have meant that the 1st Krajina Corps would have been able to achieve exchanges of Bosnian Serb POWs detained in Tuzla and Zenica. Ljubomir Mitrović, T. 15184 (7 June 2011).

2453 Milenko Todorović, T. 12942 (18 April 2011); Ex. P02183, pp. 37–38.

2454 Milenko Todorović, T. 12942 (18 April 2011); Ex. P02183, p. 38. Todorović testified that he could identify it was the Accused because they had worked together closely and he knew the Accused's voice. Milenko Todorović, T. 12944 (18 April 2011).

2455 Ljubomir Mitrović, T. 15174–15175 (7 June 2011) (the commander's first name was Slavko). Mitrović stated that the commander used this cryptic phrase possibly because he was speaking to Mitrović using an open phone line. Ljubomir Mitrović, T. 15175, 15184 (7 June 2011).

2456 Ljubomir Mitrović, T. 15185 (7 June 2011). Mitrović stated that at the time in July 1995, he was unaware of any executions of the several thousand of Bosnian men and boys who were taken prisoners. Ljubomir Mitrović, T. 15209 (7 June 2011).

2457 Ex. P02185 (confidential). The names on the list (Ex. P02185) correspond with the names on a list of persons received at Batković Collection Centre on 18 July 1995. Ex. D00228 (confidential), pp. 2, 4, 6–8. *See also* Milenko Todorović, T. 13201–13207 (21 April 2011). Mitrović testified that Todorović had informed him that a group of "20 wounded men" was transferred to the Batković Collection Centre from Srebrenica at about this time, but he could not confirm whether this was the same group or when they arrived exactly. Ljubomir Mitrović, T. 15175, 15179 (7 June 2011), T. 15273–15276 (8 June 2011); Ex. P02168. *See also* Richard Butler, T. 16706–16707 (14 July 2011). For more detailed discussions with regard to Exhibit P02168, see *infra* para. 964.

1995,[2458] including 34 ABiH soldiers from Srebrenica who had surrendered to the Drina Corps on 26 July 1995.[2459]

557. All told, a total of 171 Bosnian Muslim men were transferred to the Batkovic Collection Centre between 18 July and 22 December 1995.[2460] Records indicate that some POWs were exchanged in this same timeframe,[2461] with a final exchange of all remaining detainees on or about 24 December 1995.[2462] After this, the Batković Collection Centre was shut down.[2463]

G. The Reburial Operation (September and October 1995)

558. The Chamber recalls its previous findings that victims of the killings at, *inter alia*, Kravica Warehouse, Orahovac, Petkovci Dam, Kozluk, Branjevo Military Farm, and Pilica Cultural Centre were buried in primary gravesites before being disinterred and reburied in secondary graves, a process which spanned September and October 1995.[2464]

2458 Ex. D00228 (confidential), pp. 2–8. On 20 July 1995, the Bratunac Brigade MP reported that two Bosnian Muslims, who had crossed into Serbia, were handed back from the Serbian police to the Bratunac Brigade and taken into custody; Momir Nikolić stated that as the Bratunac Brigade did not have a prison, they were transferred to the collection centres either in Vlasencia, Knezina, or Batković. Ex. P00018, p. 19; Momir Nikolić, T. 12439–12440 (6 April 2011).

2459 Ex. D00227, p. 2. Todorović confirmed that the 34 Bosnian Muslims mentioned in Ex. D00227 were taken to the Batković Collection Centre on the basis of the agreement between Eastern Bosnia Corps Commander Novica Simić and Pandurević. Milenko Todorović, T. 13144–13145 (20 April 2011). A 23 July intercept records Pandurević inquiring as to whether he can send a group of POWs to Batković for potential exchange. Ex. P00850a. *See also* Ex. P02534 (a combat report issued by Pandurević on 22 July that requests instructions for where to send 40 POWs who had been captured by units of the Zvornik Brigade). The Chamber notes that Ex. P00850a recorded "Matković", but based on PW-057's evidence, considers that Pandurević meant "Batković". PW-057, Ex. P02279 (confidential), PT. 16023 (closed session) (28 September 2007).

2460 Ex. D00228 (confidential) (indicating that two Bosnian Muslims died during detention). *See also* Milenko Todorović, T. 13145 (20 April 2011) (stating that approximately 160 to 180 Bosnian Muslims arrived in Batković): Ljubomir Mitrović, T. 15208 (7 June 2011) (Mitorović stated that 168 Bosnian Muslims arrived). The Chamber considers that the two witnesses gave an estimated number of prisoners and it is not in conflict with the number provided in the list of the exchanged prisoners.

2461 Ex. D00228 (confidential). The Chamber notes that while one of the entries registers a POW arriving at Batković Collection Centre on 18 July 1995 and being exchanged on 10 July 1995, Todorović testified that this must be a typographical error in the document and that it is likely to be 10 August or September 1995. Milenko Todorović, T. 13147–13149 (20 April 2011), T. 13189–13190 (21 April 2011); Ex. D00228 (confidential). On 3 September 1995, the Accused sent a telegram to the commanders and the intelligence and security organs of subordinate corps, reporting the exchange of prisoners. Ex. P02250, p. 2. For more detailed discussions with regard to the Accused's involvement, see *infra* para. 1004.

2462 Ex. D00228 (confidential) (indicating that the prisoner exchanges took place on 12 September, 7 October, and 24 December 1995); Milenko Todorović, T. 13147–13149 (20 April 2011); Ljubomir Mitrović, T. 15210 (7 June 2011) (stating that he thought the all-for-all exchange took place on 25 December 1995). *See also* PW-022, Ex. P00096 (confidential), PT. 3975 (private session) (15 November 2006); PW-022, Ex. P00097, PT. 3980 (15 November 2006); PW-073, Ex. P00048 (confidential), pp. 45, 61, 105.

2463 Ljubomir Mitrović, T. 15210 (7 June 2011).

2464 Momir Nikolić, T. 12429 (6 April 2011). *See also* Adjudicated Facts 350, 351. Approximately one month after his return from the field in late October 1995, PW-057 heard from Drago Nikolić that the majority of bodies had been removed from their original graves and taken to different locations. PW-057, Ex. P02279 (confidential), PT. 15926–15927 (closed session) (27 September 2007). This information was consistent with rumours that PW-057 had heard during the preceding month. PW-057, Ex. P02279 (confidential), PT. 15927 (closed session) (27 September 2007).

559. Sometime in September 1995, the VRS Main Staff ordered an operation to disinter and relocate the bodies which had been buried in Glogova.[2465] Requests were also made by the civilian authorities in Bratunac in this connection.[2466] The operation was overseen and coordinated by elements of the security organs at all levels of the VRS.[2467]

560. Popović conveyed an order concerning the operation, which was known as "asanacija",[2468] to Momir Nikolić,[2469] and Nikolić was often seen with Beara.[2470] Although the operation was originally intended to be a secret, maintaining its secrecy soon became impossible because civilian, military, and police authorities all became involved.[2471] Following the receipt of the Bratunac civilian authorities' request, at a meeting held in the Bratunac municipal building, it was agreed that the civilian authorities would make all the necessary logistical preparations for the operation.[2472] The President of the Bratunac Municipality and the chairman of the Executive Committee thus ensured that the companies in Bratunac and Srebrenica which possessed civil engineering machinery had placed it at the operation's disposal.[2473] Sometime in September or October 1995,[2474] Deronjić procured the assistance of members of the Bratunac Civilian Protection Units, who reported to Momir Nikolić at the Bratunac Brigade Command one evening at 9:00 or 10:00 p.m. and then worked throughout the night for several nights.[2475] Police from the Bratunac CJB and

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2465 PW-075, Ex. P02065 (confidential), PT. 3864–3867 (private session) (9 November 2006); Momir Nikolić, T. 12427–12428 (6 April 2011).

2466 Momir Nikolić, T. 12427–12429 (6 April 2011).

2467 *See infra* paras. 560, 562–563.

2468 Momir Nikolić, T. 12429 (6 April 2011); Ex. P01219, p. 11 (recording that on 16 October 1995 the security and intelligence forces of the Bratunac Brigade were engaged in "asanacija" tasks issued by the VRS Main Staff); Ex. P02473, pp. 122–123. Although "asanacija" was a term which generally referred to the removal of dead bodies of people or animals found in areas where combat operations had been conducted, Momir Nikolić testified that he used the term to refer to this reburial operation, a usage which would not normally fall within the normal scope of the term. Momir Nikolić, T. 12430–12432 (6 April 2011). *See also* Adjudicated Fact 372.

2469 Momir Nikolić, T. 12428 (6 April 2011). *See also* Adjudicated Fact 352 (stating that Momir Nikolić was tasked with the organisation of the operation within the Bratunac Brigade); PW-075, Ex. P02065 (confidential) PT. 3863–3865 (private session) (9 November 2006).

2470 Although he was unable to explain how he arrived at the impression that Beara was in charge of the operation, PW-075 testified that he knew Beara was involved in the operation because he knew that Momir Nikolić received orders from his superiors within the security administration. PW-075, Ex. P02065 (confidential), PT. 3864–3867 (private session) (9 November 2006). However, PW-075 could only speculate that he had heard from Momir Nikolić that Beara was involved and was unable to recall whether Beara issued any orders to him personally. PW-075, Ex. P02065 (confidential), PT. 3867–3868 (private session) (9 November 2006). Accordingly, the Chamber is unable to find that Beara was in charge of the reburial operation, but is satisfied that Beara was involved in it.

2471 Momir Nikolić, T. 12432 (6 April 2011).

2472 Momir Nikolić, T. 12428–12429 (6 April 2011).

2473 Momir Nikolić, T. 12429 (6 April 2011). Various other civilian authorities and companies were involved in the operation, including the Chief of the Bratunac SJB, the utility company of Bratunac, the Ciglane enterprise with machinery from the Sase Mine, and the Radnik company. Momir Nikolić, T. 12428–12429 (6 April 2011).

2474 PW-066, Ex. P01738 (confidential), BT. 7886 (closed session) (20 April 2004).

2475 PW-066, Ex. P01738 (confidential), BT. 7886–7887, 7927–7929 (closed session) (20 April 2004).

the 5th Engineering Battalion of the Drina Corps were also engaged in the operation,[2476] while members of the Bratunac Brigade MP Platoon provided security and rerouted traffic in the area.[2477]

561. Aerial images presented to the Chamber places a front loader at the Glogova gravesites and indicates that earth was disturbed there on or before 30 October 1995,[2478] while another set of aerial images indicates that earth was disturbed at six sites located along the Zeleni Jadar Road between 24 August and 23 October 1995.[2479] Further aerial images indicate that these six sites were sealed in late October 1995.[2480] Moreover, as the Chamber has already noted, forensic evidence establishes links between the two primary gravesites at Glogova and six secondary gravesites at Zeleni Jadar, and between the Glogova gravesites and multiple secondary gravesites at Budak and Blječeva.[2481]

562. Meanwhile, on 14 September 1995, the VRS Main Staff sent an urgent order which was type-signed by Mladić to the Drina Corps Command and the Logistics Sector of the Main Staff, as well as to the Zvornik Brigade for information.[2482] The order conveyed Mladić's approval of five tonnes of D-2 diesel fuel for carrying out engineering works in the Drina Corps' area of responsibility and ordered the Logistics Sector of the Main Staff to deliver the fuel to Trbić at the Standard Barracks of the Zvornik Brigade.[2483] A subsequent urgent order, also dated 14 September 1995 and authorised by the Chief of the Logistics Sector of the Drina Corps, Colonel Žarko

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2476 Momir Nikolić, T. 12428–12429 (6 April 2011). *See supra* n. 402.

2477 Momir Nikolić, T. 12428 (6 April 2011). *See also* PW-075, Ex. P02065 (confidential), PT. 3863–3864 (private session) (9 November 2006) (testifying that the Bratunac MP had one patrol securing the road from Bratunac to Srebrenica).

2478 Ex. P01833 (aerial image indicating first disturbance before 27 July 1995 and second disturbance before 20 October 1995); Ex. P01834 (aerial image indicating disturbance before 30 October 1995); Dean Manning, T. 10175–10178 (22 February 2011); Dean Manning, Ex. P01819, PT. 19149–19150 (12 December 2007); Ex. P01820 (aerial image marked by Manning to indicate vehicle tracks visible on 30 October 1995).

2479 Dean Manning, Ex. P01819, PT. 18939–18942 (10 December 2007); Dean Manning, T. 10178–10180 (22 February 2011); Ex. P01840 (aerial image indicating the emergence of disturbed earth at the Zeleni Jadar 1 gravesite between 7 September and 2 October 1995); Ex. P01842 (aerial image indicating the emergence of disturbed earth at the Zeleni Jadar 2 gravesite between 24 August and 2 October 1995); Ex. P01841 (aerial image indicating emergence of disturbed earth at the Zeleni Jadar 3 gravesite between 7 September and 2 October 1995); Ex. P01846 (aerial image indicating emergence of disturbed earth at the Zeleni Jadar 4 and 5 gravesites between 7 September and 12 October 1995); Ex. P01848 (aerial image indicating emergence of disturbed earth at the Zeleni Jadar 6 gravesite between 7 and 27 September 1995).

2480 Dean Manning, Ex. P01819, PT. 18939–18941 (10 December 2007); Dean Manning, T. 10180 (22 February 2011); Ex. P01841 (aerial image indicating further movement of earth at the Zeleni Jadar 1 gravesite between 18 and 20 October 1995); Ex. P01843 (aerial image indicating the sealing of the Zeleni Jadar 2 gravesite between 20 and 23 October 1995); Ex. P01845 (aerial image indicating that the Zeleni Jadar 3 gravesite had been sealed by 20 October 1995); Ex. P01847 (aerial image indicating that the Zeleni Jadar 4 and 5 gravesites had been sealed by 18 October 1995); Ex. P01849 (aerial images indicating further movement of earth at the Zeleni Jadar 6 gravesite between 12 and 18 October 1995).

2481 *See supra* paras. 373–374.

2482 Ex. P02281.

2483 Ex. P02281. Although Exhibit P02281 refers to "Captain Milorad Trpić", the Chamber is satisfied on the basis of the evidence before it that such reference is a typographical error and that the fuel was ordered to be delivered to Captain Milorad Trbić, the assistant of Drago Nikolić. *See supra* para. 146; PW-057, T. 15453 (closed session) (14 June 2011) (testifying that Trbić was Drago Nikolić's deputy and that he thought that the order referred to Trbić); Richard Butler, T. 16864 (19 July 2011). *See also* PW-057, Ex. P02279 (confidential), PT. 15922 (closed session) (27 September 2007).

Ljuboječić, directed the Command of the 35th Logistics Base to issue 5,000 litres of fuel to the Drina Corps Command and stated that a Drina Corps representative would collect it.[2484] The Zvornik Brigade was copied on this latter order.[2485] Puzzled by the seemingly excessive quantity of fuel, Obrenović reported the order to Pandurević, who in turn checked with the Drina Corps Command and found out that "Popović and his people" were going to organise a reburial and that the fuel was required in connection with this.[2486]

563. The part of the reburial operation that occurred within the Zvornik Brigade zone of responsibility was also coordinated by Trbić.[2487] Very few people were aware of its precise details.[2488] Using a BGH and an ULT,[2489] members of the Zvornik Brigade Engineering Company and other members of the Zvornik Brigade dug up the primary gravesites over several nights, mostly under the cover of darkness.[2490] A variety of large trucks, including some from the Engineering Company as well as private entities, were used to transport the bodies away from the primary gravesites.[2491]

2484 Ex. P02559.

2485 Ex. P02559. An entry in the Zvornik Brigade Duty Officer's Notebook records the receipt of both orders from the Main Staff and includes a remark which reads "delivered to Pantić". Ex. P01119, p. 115.

2486 PW-057, Ex. P02279 (confidential), PT. 15921–15922, 15926 (closed session) (27 September 2007). Popović was also seen carrying a large map on the staircase at the Standard Barracks on 26 September 1995, inquiring whether Pandurević and Nikolić were upstairs, and then proceeding up the stairs. PW-057, Ex. P02279 (confidential), PT. 15926 (closed session) (27 September 2007). *See also* Ex. P00571a; Ex. P00571b (confidential) (recording a conversation at 6:44 p.m. on 22 September 1995 in which Popović inquires of one "Mihalić", whom Popović refers to as "Niđo", whether fuel has arrived, and "Niđo" responds that Trbić "is working" on it). The Chamber notes that, in another recorded conversation, Popović uses the name "Niđo" to address Drago Nikolić. Ex. P00498 (confidential). The Chamber is thus satisfied that the participants in the 22 September 1995 conversation were Drago Nikolić and Vujadin Popović, the respective Chiefs of Security for the Zvornik Brigade and the Drina Corps.

2487 Damjan Lazarević, Ex. P01642, PT. 14488 (29 August 2007), PT. 14510 (30 August 2007). Lazarević himself received orders from Dragan Jokić through Slavko Bogičević, Deputy Commander of Zvornik Brigade Engineering Company, that he and several others from the Zvornik Brigade, including fellow operators from the Engineering Company, were to assist with the disinterment and reburial of the bodies in a different location. Damjan Lazarević, Ex. P01642, PT. 14435, 14468, 14484 (29 August 2007). However, Lazarević reached the conclusion that Trbić was coordinating the operation because Trbić enquired about the progress of every job after its completion. Damjan Lazarević, Ex. P01642, PT. 14488–14490 (29 August 2007), PT. 14508 (30 August 2007).

2488 Damjan Lazarević, Ex. P01642, PT. 14511 (30 August 2007).

2489 Damjan Lazarević, Ex. P01642, PT. 14529 (30 August 2007).

2490 Damjan Lazarević, Ex. P01642, PT. 14484 (29 August 2007), PT. 14510 (30 August 2007). *See also* Damjan Lazarević, Ex. P01642, PT. 14523 (30 August 2007) (stating that Rade Bosković, Cvijetin Ristanović and a person called Miladinović, whose first name he thought was Milovan, were involved in the reburial operation). The Zvornik Brigade Engineering Company was tasked only with the disinterment, not with the reburial of the bodies, and the disinterment with which Lazarević was involved at Glogova, Kozluk and Branjevo took five or six days. Damjan Lazarević, Ex. P01642, PT. 14469, 14486–14487 (29 August 2007), PT. 14510 (30 August 2007). *See also* Richard Wright, Ex. P00874, KT. 3721 (29 May 2000) (testifying that he concluded that the burials at Kozluk and the reburials at secondary gravesites took place over a very short period of time).

2491 Damjan Lazarević, Ex. P01642, PT. 14485 (29 August 2007), PT. 14527 (30 August 2007). The trucks had a carrying capacity of approximately 12 cubic metres. Damjan Lazarević, Ex. P01642, PT. 14528 (30 August 2007).

564. Aerial images reveal the emergence of disturbed earth at the Lažete,[2492] Petkovci Dam,[2493] Kozluk,[2494]and Branjevo Military Farm gravesites between 7 September and 27 September 1995.[2495] Other sets of aerial images indicate a proliferation of disturbed earth at dozens of sites along the Hodžići,[2496] Snagovo–Liplje,[2497] and Čančari Roads during that same time period.[2498] Additionally, as the Chamber has previously noted, forensic evidence links the Lažete primary gravesites to seven secondary gravesites located along Hodžići Road,[2499] the primary gravesites at the Petkovci Dam to five secondary gravesites along the Snagovo–Liplje Road,[2500] the primary gravesites at Kozluk to five secondary gravesites along Čančari Road,[2501] and the primary gravesite at Branjevo Farm to nine gravesites located along Čančari Road.[2502]

565. On the basis of the foregoing evidence, the Chamber finds that during September and October 1995, on the order of the VRS Main Staff, the bodies of those killed during July 1995 in the Bratunac and Zvornik Brigades' respective areas of responsibility were removed from their original graves and reburied in secondary graves. This operation was carried out by the security organs of the Main Staff, Drina Corps, Bratunac Brigade and Zvornik Brigade. Momir Nikolić and Trbić coordinated the reburial activities in the areas of Bratunac and Zvornik respectively, with

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2492 Dean Manning, Ex. P01819, PT. 18938 (10 December 2007); Ex. P01852; Ex. P01853 (both aerial images indicating emergence of disturbed earth at Lažete 1 and 2 gravesites between 7 and 27 September 1995).

2493 Dean Manning, Ex. P01819, PT. 18935 (10 December 2007); Ex. P01856 (aerial image indicating emergence of disturbed earth at the Petkovci Dam gravesite between 7 and 27 September 1995).

2494 Dean Manning, Ex. P01819, PT. 18933–18934 (10 December 2007); Ex. P01859 (aerial image indicating emergence of disturbed earth at the Kozluk gravesite between 7 and 27 September 1995).

2495 Dean Manning, Ex. P01819, PT. 18937 (10 December 2007); Ex. P01645 (aerial image showing Branjevo Farm gravesite in the process of being disturbed on 27 September 1995); Damjan Lazarević, Ex. P01642, PT. 14532–14533 (30 August 2007); Ex. P01651 (same aerial image marked by Damjan Lazarević to show where the machines for disinterment were parked during the reburial process). *See also* Ex. P02473, p. 122 (referring to reburials at Lažete, Petkovci, and Kozluk).

2496 Ex. P01864 and Ex. P01865 (aerial images showing emergence of disturbed earth at Hodžići Road 2 gravesite between 7 September and 2 October 1995); Ex. P01866 and Ex. P01867 (aerial images showing emergence of disturbed earth at Hodžići Road 3 gravesite between 7 September and 2 October 1995); Ex. P01868 and Ex. P01869 (aerial images showing emergence of disturbed earth at Hodžići Road 4 and 5 gravesites between 7 September and 2 October 1995); Ex. P01870 and Ex. P01871 (aerial images showing emergence of disturbed earth at Hodžići Road 6 gravesite between 7 September and 2 October 1995); Ex. P01872 and Ex. P01873 (aerial images showing emergence of disturbed earth at Hodžići Road 7 gravesite between 7 September and 2 October 1995).

2497 Ex. P01876, Ex. P01877 and Ex. P01878 (aerial images showing emergence of disturbed earth at Liplje 1, 2 and 3 gravesites between 7 September and 2 October 1995); Ex. P01879 and Ex. P01880 (aerial images showing emergence of disturbed earth at Liplje 4 gravesite between 7 September and 2 October 1995).

2498 Pairs and sets of aerial images document the emergence of 12 sites of disturbed earth along Čančari Road between 7 September 1995 and 2 October 1995. Ex. P01883 and Ex. P01884 (Čančari Road 1); Ex. P01885 and Ex. P01886 (Čančari Road 2); Ex. P01887 and Ex. P01888 (Čančari Road 3); Ex. P01889 and Ex. P01890 (Čančari Road 4 and 5); Ex. P01891 and Ex. P01892 (Čančari Road 6); Ex. P01894 (Čančari Road 7); Ex. P01895 (Čančari Road 8); Ex. P01896, Ex. P01897, and Ex. P01898 (Čančari Road 9); Ex. P01899, Ex. P01900, and Ex. P01901 (Čančari Road 10); Ex. P01902, Ex. P01903, and Ex. P01904 (Čančari Road 11); Ex. P01905, Ex. P01906, and Ex. P01907 (Čančari Road 12).

2499 *See supra* para. 437.

2500 *See supra* para. 457.

2501 *See supra* para. 479.

2502 *See supra* paras. 506–507.

Popović having an overall supervisory role. Beara was also involved but the evidence does not allow an inference to be drawn as to the specific nature of his involvement.

H. Calculation of the Total Number of Bosnian Muslims Killed in the Aftermath of the Fall of Srebrenica

1. Introduction

566. The purpose of the present section is twofold: first, to calculate the total number of Bosnian Muslims found in the previous sections of this Chapter to have been killed by members of the Bosnian Serb Forces at the specific sites referred to in the Indictment; and, secondly, to determine how many other Bosnian Muslims were killed by members of the Bosnian Serb Forces otherwise than in combat in circumstances which are not specified in the indictment. After determining these two totals, the Chamber will make a finding of an overall total number of Bosnian Muslims killed by the Bosnian Serb Forces otherwise than in combat subsequent to the fall of Srebrenica.

567. In conducting this analysis, the Chamber will exclude from the calculation those Bosnian Muslims who died in the aftermath of the fall of Srebrenica as a result not only of combat but also of such other causes as suicide, mines, and fighting among the Bosnian Muslims.[2503]

2. Total Number of Bosnian Muslims Found to Have Been Killed by Bosnian Serb Forces in the Specific Sets of Circumstances Referred to in the Indictment

568. In the earlier sections of the present Chapter the Chamber has considered the allegations of killings in paragraphs 21.1–22.4 and has found that Bosnian Serb Forces carried out killings of the following:

(a) Potočari Area

- 1 Bosnian Muslim in Potočari;[2504]

(b) Bratunac Area

- 6 Bosnian Muslims who were questioned at the Bratunac Brigade Headquarters; [2505]
- 15 Bosnian Muslims from the Jadar River site; [2506]

[2503] The Chamber will examine the submission of the Accused that a very large number of those in the column that attempted to break out of the Srebrenica enclave "were killed in combat or by mines or in internal conflicts or other situations". Accused Final Brief, paras. 314–319.

[2504] *See supra* para. 309.

[2505] *See supra* para. 344.

- 150 Bosnian Muslims from the Cerska Valley site;[2507]
- Between 600 and 1,000 Bosnian Muslims from Kravica Warehouse;[2508]
- 5 Bosnian Muslims from Kravica Supermarket; [2509]
- Many Bosnian Muslims taken from a hangar behind Vuk Karadžić School;[2510]
- A number of Bosnian Muslims taken from the trailer of a truck in Bratunac town;[2511]
- 1 Bosnian Muslim taken from a bus at the Vuk Karadžić School;[2512]
- Approximately 45–65 Bosnian Muslims who were held inside and outside the Vuk Karadžić School;[2513]

(c) Zvornik Area

- Between 830 and 2,500 Bosnian Muslim men who were detained at the Grbavci School in Orahovac;[2514]
- At least 809 Bosnian Muslims from the Petkovci site;[2515]
- At least 761 Bosnian Muslims from the Kozluk site;[2516]
- At least 9 Bosnian Muslims from the Kula School site;[2517]
- At least 1,656 Bosnian Muslims from the Branjevo Military Farm and Pilica Cultural Centre sites;[2518]
- At least 3 Bosnian Muslims from the Nezuk site;[2519]
- 10 Bosnian Muslims taken from Milići Hospital;[2520]

2506 *See supra* para. 348.
2507 *See supra* para. 352.
2508 *See supra* para. 376.
2509 *See supra* para. 381.
2510 *See supra* para. 393.
2511 *See supra* para. 395.
2512 *See supra* para. 397.
2513 *See supra* para. 401.
2514 *See supra* para. 483.
2515 *See supra* para. 458.
2516 *See supra* para. 481.
2517 *See supra* para. 488.

- 4 Bosnian Muslims from the site near Snagovo;[2521]
- 4 Bosnian Muslims who had survived the events at the Branjevo Military Farm site;[2522]

(d) Other

- 54 Bosnian Muslims from the Bišina site;[2523]
- 6 Bosnian Muslims from the site near Trnovo;[2524]
- Approximately 22 Bosnian Muslims who were detained at Luke School near Tišća;[2525]

569. These findings have been used as the basis for the calculation of a total number of Bosnian Muslims killed in the specific sets of circumstances alleged in paragraphs 21.1–22.4 of the Indictment. In making this calculation the following considerations have been taken into account:

- For some of the incidents described in the Indictment, the Chamber was unable to determine either the precise number killed or even an approximation in the form of a range.[2526] Therefore, the Chamber has not included these killings when calculating the total number killed.
- Where the Chamber has found a range of numbers of victims, it has taken the minimum number of people it believes beyond reasonable doubt to have been killed by Bosnian Serb Forces.[2527]
- The Chamber found that approximately 22 Bosnian Muslim men detained at the Luke School were later killed in the early hours of 14 July 1995.[2528] PW-017 testified that the VRS soldiers counted 22 men on the truck that went to the location of the killings.[2529] The Chamber infers that, since PW-017 alone survived, a minimum of 21 Bosnian Muslim men were killed on this occasion.

2518 *See supra* para. 508.
2519 *See supra* para. 527.
2520 *See supra* para. 533.
2521 *See supra* para. 538.
2522 *See supra* para. 541.
2523 *See supra* para. 546.
2524 *See supra* para. 551.
2525 *See supra* para. 314.
2526 *See supra* para. 393. (The Chamber found that Bosnian Serb Forces killed many Bosnian Muslims taken from the hangar behind the Vuk Karadžic School and a number of Bosnian Muslims taken from the trailer of a truck parked in Bratunac Town, but the evidence did not support a finding of a particular number killed.)
2527 *See, e.g., supra* para. 376. (The Chamber found that between 600–1,000 Bosnian Muslims were killed at Kravica Warehouse.)

- Of the six Bosnian Muslims who were found to have been killed after being questioned at Bratunac Brigade Headquarters,[2530] three were found in gravesites containing the bodies of those killed at Kozluk and two were found in gravesites containing the bodies of those killed at Branjevo Military Farm and Pilica Cultural Centre.[2531] These five have, therefore, been excluded from the figure for the number killed after questioning at Bratunac Brigade Headquarters in order to avoid double counting.[2532]

- Paragraph 21.15.2 of the Indictment alleges that the number killed in Bišina was "approximately 39". However, the Chamber found that 54 Bosnian Muslims were killed in Bišina, but it considered that to the extent that this figure exceeds the one given in paragraph 21.15.2 of the Indictment, it lies outside the scope of what is alleged in that paragraph and accordingly does not form any part of the case against the Accused.[2533] In the calculation of the total number killed the Chamber will, therefore, consider the number of victims at Bišina to be 39.

570. On the basis of the above the Chamber finds that Bosnian Serb Forces killed at least 4,970 Bosnian Muslims in the specific sets of circumstances alleged in paragraphs 21.1–22.4 of the Indictment. Table 1 below shows how this figure has been reached.

TABLE 1: TABLE SHOWING THE BASIS FOR THE CALCULATION OF THE TOTAL NUMBER OF BOSNIAN MUSLIMS KILLED IN THE SPECIFIC SETS OF CIRCUMSTANCES REFERRED TO IN PARAGRAPHS 22.1–22.4 OF THE INDICTMENT

Bosnian Muslim in Potočari	1
Bosnian Muslims questioned at the Bratunac Brigade Headquarters	1
Jadar River site	15
Cerska Valley site	150
Kravica Warehouse	600
Kravica Supermarket	5
Bosnian Muslim taken from a bus at the Vuk Karadžić School	1
Bosnian Muslims who were held inside and outside the Vuk Karadžić School	45
Grbavci School in Orahovac	830
Petkovci site	809

2528 *See supra* para. 314.
2529 PW-017, Ex. P02883, KT. 1291 (24 March 2000).
2530 *See supra* para. 344.
2531 Ex. P01940 (confidential). *See also supra* para. 344.
2532 *See supra* paras. 501–507.
2533 *See supra* para. 546.

Kozluk site	761
Kula School site	9
Branjevo Military Farm and Pilica Cultural Centre sites	1,656
Nezuk site	3
Bosnian Muslims taken from Milići Hospital	10
The site near Snagovo	4
Bosniam Muslims who had survived the events at Branjevo Military Farm	4
Bišina site	39
The site near Trnovo	6
Bosnian Muslims held at Luke School near Tišća	21
TOTAL NUMBER FOUND TO HAVE BEEN KILLED AS ALLEGED IN PARAGRAPHS 21.1-22.4 OF THE INDICTMENT	4,970

571. The Chamber emphasizes that the figure of 4,970 is a conservative calculation of the minimum number killed for various reasons some of which have been alluded to already: where it has only been possible to give a range of numbers, the lower limit has been taken; and in some instances a numerical estimate of the number killed was not possible. In addition, the number of victims identified in remains recovered from gravesites has been increasing over recent years[2534] and there is no reason to suppose that this trend will not continue. Therefore, the actual number of Bosnian Muslims killed in the specific sets of circumstances referred to in paragraphs 21.1–22.4 is likely to be markedly higher than 4,970.

3. Total Number of Srebrenica-Related Missing

572. The Prosecution gives a global figure of 7,000 Bosnian Muslim men and boys who it alleges were summarily executed as a result of the implementation of the JCE to Murder all the able-bodied Muslim men from Srebrenica.[2535] In order to assess this allegation, the Chamber will first determine the total number of Srebrenica-related missing.

573. Inferences as to the number killed are inherently less exact if they rest essentially upon the demography of Srebrenica before its fall, estimates of the size of the 28th Division and the numbers

[2534] *See, e.g.*, Ex. P01776, p. 28 (Table entitled "Overview of Progress in the (DNA) Identification of Srebrenica Missing" showing that on 12 February 2000 ICMP had identified 68 Srebrenica-related missing, on 16 November 2005 2,591, on 11 January 2008 4,263 and on 9 April 2009 5,555). An examination of the records provided by the ICMP in February 2010 and by the BiH authorities indicates that the remains of at least 5,741 individuals recorded as missing following the fall of Srebrenica and Žepa had been identified. Ex. P00170, p. 2.

[2535] Indictment, para. 28.

reaching Tuzla,[2536] since these factors do not contain evidence relating to the individuals concerned and their connection with the circumstances of the deaths of Bosnian Muslims from Srebrenica is less direct.

574. The Accused submits that if the number of people about whom the World Health Organisation ("WHO") had information in the area of the Tuzla–Podrinje Canton on 29 July—34,341 people—is subtracted from the number of those in Srebrenica in January 1995—37,555 people—"the argument that 7,000 were killed (executed) is simply untenable".[2537] The Chamber does not accept this submission. First, the figures on which it rests are approximations. The WHO document is explicit that this is the case. The value of the data on the population of Srebrenica in January 1995 is limited by the fact that they concern a time six months prior to the fall of the enclave[2538] and by the difficult conditions subsisting at the time. Second, the absence of data on individuals reduces the utility of the figures for detailed demographic analysis.[2539] Third, the approach of the Accused ignores the significant amount of testimony on the circumstances of the killings and the related forensic and other analyses conducted in connection with the bodies that have been recovered which the Chamber finds to have been reliable.[2540]

575. The Majority is satisfied that the most precise and reliable method of calculating the number of Bosnian Muslims killed in the aftermath of the fall of Srebrenica is through an analysis of number of persons reported missing, identifications of persons in gravesites associated with the Srebrenica events and forensic and other evidence of the circumstances leading to the death of those exhumed from these gravesites.

576. The most recent report on the Srebrenica-related missing is the 2009 Integrated Report.[2541] It is based on information provided by the ICRC, ICMP, PHR, and the authorities of Bosnia and

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2536 Ratko Škrbić considered the demography of Srebrenica before its fall, estimates of the size of the 28th Division, and the number of members of the column reaching Tuzla in order to assess whether over 7,000 militarily able-bodied men belonging to the 28th Division were killed. Ratko Škrbić, T. 18827–18837, 18847–18855 (6 February 2012). His testimony on this issue is in any event of low probative value because it rests to such an extent on his report "Movement of the Srebrenica Population", which the Chamber did not admit, by majority, Judge Nyambe dissenting and Judge Mindua appending a separate opinion. Decision on Admission of Expert Report of Ratko Škrbić with Separate Opinion of Judge Mindua and Dissenting Opinion of Judge Nyambe, 22 March 2012.

2537 Accused Final Brief, paras. 306–307. *See also* Ex. P02873, p. 4 (a document from the Tuzla WHO Field Office dated 29 July 1995 giving an estimate of 34,341 "recently displaced people from Srebrenica to Tuzla-Podrinje Canton"); Ex. D00117 (document of 11 January 1995 produced by the Civil Protection Staff of Srebrenica Municipality giving a breakdown of a total population of 36,051).

2538 Helge Brunborg, T. 10141 (17 February 2011).

2539 Helge Brunborg, T. 10141 (17 February 2011) (testifying that he did not see the relevance of the figures on the population of Srebrenica in January 1995 that were given in Ex. D00117 because they do not contain a list of names and dates of birth); Ewa Tabeau, T. 11516–11517 (17 March 2011) (testifying that the figures in Ex. D00117 are "useless" for the analysis that she was planning to do because they give no age or gender breakdown and they cannot be linked to individual victims).

2540 *See supra* paras. 49–62, 67–70.

2541 *See supra* para. 50.

Herzegovina.[2542] The census and voters' registers were also used to crosscheck the data.[2543] Srebrenica-related missing are defined as persons missing in connection with the fall of the Srebrenica enclave on 11 July 1995.[2544]

577. The 2009 Integrated Report states that the overall number of missing and dead persons in relation to the fall of Srebrenica is 7,905.[2545] It includes 213 persons who were identified by the ICMP in Srebrenica-related graves, but who had not been reported as missing to the ICRC or PHR.[2546] In addition to the 7,905 missing persons there were a further 294 bodies with unique DNA profiles which could not be linked to anybody.[2547] The question to be addressed next will be how many of these missing persons were killed by Bosnian Serb Forces otherwise than in combat.

4. Identification of the Srebrenica-Related Missing

578. The ICMP began its work in BiH in 2000[2548] taking DNA samples from recovered human remains, and comparing these with blood samples from the family members of those listed as Srebrenica-related missing.[2549] Through this process of DNA comparison, the remains of persons reported missing in relation to the fall of Srebrenica have been identified.[2550] The term "identified persons" relates to the human remains exhumed from gravesites in the territory of Srebrenica and neighbouring municipalities in Eastern Bosnia and for which the DNA-matching reports are available.[2551]

2542 *See supra* paras. 50–51.
2543 *See supra* para. 51.
2544 *See supra* para. 51.
2545 Ex. P01776, pp. 28, 30. As of 30 November 2007, the total number of Srebrenica-related missing could be estimated to be 8,100 on the basis of the DNA-matching rate and the number of DNA reference samples for individuals reported to be missing as a result of the fall of Srebrenica. Ex. P02004 (confidential); Thomas Parsons, Ex. P01936, PT. 20878 (1 February 2008). Of the Srebrenica-related missing, 3,162 (or 41.1%) disappeared from Potočari or in the forest. Another 2,340 persons (30.4%) disappeared from three locations: Kravica, Konjević Polje, and Kamenica. Ex. P01776, p. 16. At least 85.8% are of Muslim-declared ethnicity and 13.4% of unknown ethnicity. Ex. P01776, p. 18. The overwhelming majority of the missing who could be matched to people in the 1991 census were residents at that time in five municipalities: Srebrenica, Bratunac, Zvornik, Vlasenica, and Han Pijesak. Ex. P01776, pp. 23–24.
2546 Helge Brunborg, T. 9641–9644 (9 February 2011); Ex. P01776, pp. 28–30. Some missing persons were not reported as such to the ICRC because, *inter alia,* entire families had been killed so that no one was left to make a report, or in other cases family members were unable or unwilling to make such reports. Helge Brunborg, T. 9643 (9 February 2011).
2547 Helge Brunborg, T. 9643 (9 February 2011); Ex. P01777 (confidential), p. 4. Brunborg testified that these no-name DNA profiles cannot be associated with anyone, because probably family-members did not report them as missing, either because the whole family had been killed or because, for medical or political or ethical or some other reason—such as residence in a country far away—they did not come forward to donate blood. Helge Brunborg, T. 9726 (10 February 2011).
2548 *See supra* para. 56.
2549 *See supra* para. 56.
2550 *See supra* para. 56.
2551 *See supra* para. 56.

579. The remains of at least 5,274 identified victims have been exhumed from mass graves and other gravesites in the Srebrenica area, including locations on the surface, and identified afterwards by DNA analysis.[2552] These 5,274 identified individuals constitute 66.7% of all 7,905 Srebrenica-related missing.[2553]

580. On 21 April 2010 Dušan Janc provided a report containing slightly more up-to-date identification data than the 2009 Integrated Report.[2554] It shows that there have been identifications in almost all cases by DNA of 5,769 Srebrenica victims from remains in gravesites,[2555] 688 Srebrenica victims as surface remains in areas through which the column was passing,[2556] and 76 individuals in a category which Janc describes as "Others".[2557] The total number of Srebrenica victims that have been identified in the Janc Report of April 2010 is, therefore, 6,533.[2558]

581. There is a significant overlap between the 4,970 Bosnian Muslims who were found to have been killed in the specific circumstances referred to in paragraphs 21.1–22.4 of the Indictment and the 6,533 identified Srebrenica victims referred to in the Janc Report of April 2010. Specifically, 4,850 of the 6,533 identified Srebrenica victims have been used in some way in the preceding sections of the present Chapter as the basis for the following findings of numbers killed by Bosnian Serb Forces: 149 at Cerska Valley,[2559] 600 at Kravica Warehouse,[2560] 830 at Orahovac,[2561] 809 at Petkovci,[2562] 761 near Kozluk,[2563] 1,656 at Branjevo Military Farm and Pilica Cultural Centre,[2564]

2552 Ex. P01776, p. 30.

2553 Ex. P01776, p. 30.

2554 Ex. P00170 (Srebrenica Investigation: Update to the Summary of Forensic Evidence – Exhumation of the Graves and Surface Remains Recoveries Related to Srebrenica and Žepa – April 2010) ("Janc Report of April 2010"). By the term "Srebrenica victim" Janc means an individual recorded as missing following the fall of Srebrenica. *See* Ex. P00170, p. 2; Dusan Janc, T. 14677 (26 May 2011).

2555 Ex. P00170, pp. 3–5. Janc finds that there were 5,777 Srebrenica and Žepa victims in graves as identified by DNA and other analysis. Only the Vragolovi grave containing eight identified persons was related to Žepa. The remaining graves containing 5,769 identified individuals were all Srebrenica-related. *Ibid.*

2556 Ex. P00170, pp. 43–46.

2557 Ex. P00170, pp. 37–39. The category of "Others" consists of [18] identified individuals whose remains have been found in Serbia; 14 as Kozluk surface remains; 6 at the Godinjske Bare site; and 38 that are unclassified. *Ibid.*

2558 This is the sum of the 5,769 Srebrenica-related victims identified in gravesites, 688 Srebrenica-related victims identified as surface remains, and 76 others.

2559 The Chamber noted that 149 Srebrenica victims were identified in the Cerska gravesite, but it found that 150 Bosnian Muslims were killed there on the basis of the anthropological evidence. *See supra* paras. 349–352.

2560 The 600 Bosnian Muslims found to have been killed at Kravica Warehouse consist of 31 Srebrenica victims identified at Ravnice 1; 172 Srebrenica victims identified at Ravnice 2 and a large proportion of those identified in Glogova 1 and 2 and Zeleni Jadar 1A, 1B, 2, 3, 4, 5, and 6, Budak 1 and 2, and Bljećeva 1, 2, and 3. *See supra* paras. 367–376.

2561 The 830 Bosnian Muslims found to have been killed at Orahovac consist of 118 Srebrenica victims in Lažete 1, 182 in Lažete 2, 90 in Hodžići Road 1, 102 in Hodžići Road 2, 39 in Hodžići Road 3, 69 in Hodžići Road 4, 54 in Hodžići Road 5, 65 in Hodžići Road 6, and 111 in Hodžići Road 7. *See supra* para. 438.

2562 The 809 Bosnian Muslims found to have been killed at Petkovci consist of 18 Srebrenica victims in the Petkovci Dam grave, 157 in Liplje 1, 173 in Liplje 2, 57 in Liplje 3, 288 in Liplje 4, and 116 in Liplje 7. *See supra* para. 458.

2563 The 761 Bosnian Muslims found to have been killed near Kozluk consist of 336 Srebrenica victims identified at Kozluk, 118 in Čančari Road 2; 138 in Čančari Road 3; 108 in Čančari Road 7; and 61 in Čančari Road 13. *See supra* paras. 478–480.

2564 The 1,656 Bosnian Muslims found to have been killed at Branjevo Military Farm and the Pilica Cultural Centre

39 at Bišina[2565] and 6 near Trnovo.[2566] In other words, 4,850 of the 6,533 identified Srebrenica victims referred to in the Janc Report of April 2010 were found to have been killed by Bosnian Serb Forces in the specific circumstances alleged in paragraphs 21.1–22.4 of the Indictment. The remaining 1,683 of the 6,533 identified Srebrenica victims were, therefore, not used as the basis for the findings in the previous sections.

582. Similarly, a number of persons found in the previous sections to have been killed are not included in the 6,533 identified Srebrenica victims referred to in the Janc Report of April 2010, because they are known by name but have not been identified in any gravesite. They are one of the five individuals killed at Bratunac Brigade Headquarters, all ten of the Bosnian Muslim patients taken from the Milići Hospital,[2567] three of the four killed near Snagovo[2568] and all four Bosnian Muslims who had survived the events at Branjevo Military Farm.[2569]

5. Additional Srebrenica Victims Killed by Bosnian Serb Forces

583. The Chamber will now consider how many of the 1,683 identified Srebrenica victims who were referred to in the Janc Report of April 2010 and were not the basis for any of the findings in the previous sections were killed by Bosnian Serb Forces otherwise than in combat.

(a) Srebrenica Victims Identified in Glogova 1 and 2; Zeleni Jadar 1A, 1B, 2, 3, 4, 5 and 6; Budak 1 and 2; and Blječeva 1, 2 and 3

584. The Chamber has found that all 31 Srebrenica victims found in Ravnice 1 and all 172 found in Ravnice 2 were killed at Kravica Warehouse, but that only some of the 1,131 Srebrenica victims identified at Glogova 1 and 2 and all the secondary graves related to Glogova 1 and 2[2570] were killed at Kravica Warehouse.[2571] Since the Chamber found that Bosnian Serb Forces killed a minimum of 600 Bosnian Muslims at Kravica Warehouse, it follows that at least 397 of the 1,131 Srebrenica victims identified at Glogova 1 and 2 and all the related secondary graves are attributable to the killing at Kravica Warehouse. The question now to be considered is how many of

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consist of 137 Srebrenica victims identified at the primary gravesite at Branjevo Military Farm; 178 at Čančari Road 4; 288 at Čančari Road 5; 158 at Čančari Road 6; 210 at Čančari Road 9; 379 at Čančari Road 10; 140 at Čančari Road 11; and 166 at Čančari Road 12. *See supra* paras. 504–508.

2565 The 39 Bosnian Muslims found to have been killed at Bišina consist of 39 Srebrenica victims identified at the Bišina gravesite. *See supra* paras. 545–546.

2566 The 6 Bosnian Muslims found to have been killed are the 6 Srebrenica victims identified at Goďinjske Bare. *See supra* paras. 550–551.

2567 *See supra* paras. 528–533.

2568 *See supra* paras. 534–538.

2569 *See supra* paras. 539–541.

2570 Zeleni Jadar 1A, 1B, 2, 3, 4, 5, and 6; Budak 1 and 2; and Blječeva 1, 2, and 3. Ex. P00170, p. 40.

2571 *See supra* para. 376.

the remaining 734 Srebrenica victims identified at Glogova 1 and 2 and the related secondary graves were killed by Bosnian Serb Forces otherwise than in combat.

585. The Chamber has found that those buried at Glogova 1 and 2 and all the related secondary graves include not only those killed at Kravica Warehouse, but also some who were taken from Bratunac town—in particular, from near the Vuk Karadžić school—others from the Bratunac-Konjević Polje road,[2572] and still others who had been captured by the authorities in Serbia and returned to the RS.[2573] Moreover, in view of the circumstances prevailing in Konjević Polje, Bratunac town, and along the Bratunac–Konjević Polje road immediately before the burials took place,[2574] the Chamber finds that the bodies recovered from these locations were those of Bosnian Muslims killed by the Bosnian Serb Forces otherwise than in combat. The Chamber concludes that Bosnian Serb Forces killed otherwise than in combat all 1,131 Srebrenica victims identified at Glogova 1 and 2 and all the related secondary graves.

(b) Other Srebrenica Victims Identified in the Janc Report of April 2010

586. In the previous section, the Chamber found that of the 1,683 identified Srebrenica victims referred to in the Janc Report of April 2010 who were not explicitly the basis for any of the findings in relation to paragraphs 21.1–22.4 of the Indictment, 734 were killed by Bosnian Serb Forces otherwise than in combat. This leaves 949 Srebrenica victims comprising a further 191 identified in gravesites, 688 identified in surface remains and 70 of the 76 Srebrenica victims identified in what Janc has classified as "Others".[2575]

587. Of the 191 identified Srebrenica victims exhumed from gravesites, evidence is available from which the Chamber concludes that the following identified persons were killed otherwise than in combat:

2572 Dušan Janc suggested that those whose bodies were recovered from the Konjević Polje–Bratunac road may have been killed in combat. Dušan Janc, T. 14683–14685 (26 May 2011). However, the Chamber is satisfied that these were bodies of Bosnian Muslims killed by Bosnian Serb Forces otherwise than in combat. The evidence regarding military action against the column and the suicides of some of those in the column does not indicate that any resulting deaths occurred actually on the Konjević Polje–Bratunac road. *See supra* paras. 315–321. Moreover, the search of the Konjević Polje–Bratunac Road did not extend beyond 2 or 3 metres from the road because of the danger of mines. PW-064, T. 13442 (28 April 2011). Ruez testified that while "[n]o one can ever exclude someone willing to commit suicide", people who went to the Konjević Polje-Bratunac road had gone there to surrender. Jean-René Ruez, T. 1045 (30 March 2010).

2573 *See supra* para. 370.

2574 *See supra* paras. 322–341, 382–401.

2575 Ex. P00170, pp. 3–5, 37–39, 43–46. Six of the 76 in Janc's category of others are the six individuals recovered as surface remains in Godinjske Bare who were the victims of the killings near Trnovo alleged in paragraph 21.16 of the Indictment. Ex. P00170, p. 38.

- 33 identified at Nova Kasaba 1996;[2576]
- 51 at Nova Kasaba 1999;
- 9 at Konjević Polje 1; and
- 3 at Konjević Polje 2.[2577]

588. This makes a total of 96 identified Srebrenica victims. The evidence does not allow conclusions to be drawn as to the manner in which the remaining 95 died.[2578] In light of the locations of the gravesites, the Chamber considers it very probable that Bosnian Serb Forces killed them after capture and not in combat, but in the absence of adequate evidence as to the condition of the bodies recovered, the Chamber cannot make a finding beyond reasonable doubt that this is the case.

2576 Ex. P01320, p. 8 (Report by William Haglund on the forensic investigation of four graves in the area of Nova Kasaba Bosnia and Herzegovina); William Haglund, Ex. P01359, KT. 3738–3742 (29 May 2000). The exhumation of Nova Kasaba 1996 took place in July 1996 and the condition of the bodies exhumed was consistent with approximately one year of burial. Ex. P01320, p. 9. Of the 33 victims recovered, 27 had their hands bound behind their backs. Ex. P01320, pp. 9, 58; William Haglund, Ex. P01359, KT. 3740 (29 May 2000); William Haglund, Ex. P01306, PT. 8910 (15 March 2007). Some of them were in a kneeling or semi-sitting position when they were shot. Ex. P01320, pp. 9, 35, 58; William Haglund, Ex. P01359, KT. 3740–3741 (29 May 2000); William Haglund, Ex. P01306, PT. 8911 (15 March 2007). The cause of death for 32 of the 33 victims was one or more gunshot wounds and for one it was massive head trauma. Ex. P01320, pp. 9, 51–54, 59; William Haglund, Ex. P01359, KT. 3740 (29 May 2000).

2577 Nova Kasaba 1999 and Konjević Polje 1 and 2 were excavated in 1999 together with the gravesites at Kozluk and Glogova. The results of the excavations are given in Ex. P00894 ("ICTY Operations in Bosnia-Herzegovina 1999 Season: Report of the Chief Pathologist" signed by Dr. John Clark) and Ex. P01060 ("Report on the Exhumation of Mass Gravesites in Eastern Bosnia, August-October 1999" by Jose Pablo Baraybar). The vast majority of those in all the gravesites had been shot by high velocity weapons, mostly once or twice but occasionally as many as eight times; the trunk was the commonest part of the body injured; and the differences between the graves did "not mask the overwhelming and uniform evidence of hundreds of men having been shot and buried in mass graves". Ex. P00894, p. 25. All the gravesites featured a general pattern of deliberately targeted, execution-style injuries. John Clark, Ex. P00897, KT. 3969–3971 (31 May 2000). The most common type of combat casualty is caused by blasts and shrapnel, but the injuries sustained by the individuals in the graves were bullet injuries, the majority of which entered from behind. Ex. P00894, p. 25; John Clark, Ex. P00897, KT. 3940–3941 (31 May 2000). Furthermore, the average number of gunshots per individual killed in combat is typically much higher than the average number of two to three found in the individuals here. Ex. P00894, p. 18; John Clark, Ex. P00897, KT. 3932, 3940–3941 (31 May 2000); John Clark, Ex. P00892, PT. 7368 (20 February 2007). Evidence at each of the graves was consistent with some individuals whose bodies were recovered being shot while in the graves. Ex. P01060, pp. 4, 5, 12, 18, 23, 29. Jose Baraybar, Ex. P01067, KT. 3821, 3826, 3835, 3861–3862, 3867 (30 May 2000). In addition, NK 08, one of the four graves making up Nova Kasaba 1999, in which 33 individuals were found, contained materials consistent with the presence of an execution site nearby. Ex. P01060, pp. 4, 18; Jose Baraybar, Ex. P01067, KT. 3828–3830 (30 May 2000).

2578 These 95 identified Srebrenica victims consist of 17 from the Sandići gravesite, 12 from Vlasenička Jelovačka Česma, 11 from Mršići, 6 from Potočari 2006, 5 from Potočari 2007, 3 from Srebrenica Hospital, 5 from Nova Kasaba 2001, 5 from Kaldrmice, 5 from Brežljak, 4 from Motovska Kosa, 9 from Križevići, 2 from Divić and 1 each from Nova Kasaba (individual) (site code: N.KAS-4), Nova Kasaba (individual) (site code: N.KAS-5), Kaldrmice (individual), Pusmilići (individual), Šeher (individual), Šeher – Osmaci (site code: SEH-2/1), Šeher – Osmaci (site code: SEH-2/3), Šeher – Osmaci (site code: SEH-3/1), Krušev Do – Vukotin stan (individual), Biljaća – Bratunac, and Kazani – Srebrenica. Ex. P00170, pp. 4–5.

589. Altogether 688 Srebrenica victims have been identified as surface remains,[2579] though the actual number of surface remains is likely to be higher.[2580] The locations of the surface remains that have been recovered are consistent with the route taken by the column which set out from Jaglići and Šušnjari.[2581] Some may have been killed in combat and some may have been suicides.[2582] The Chamber, therefore, cannot find that Bosnian Serb Forces killed otherwise than in combat the Srebrenica victims recovered as surface remains.

590. The Chamber does not find that Bosnian Serb Forces killed the 76 Srebrenica victims in Janc's category of "Others" otherwise than in combat, with the exception of the six recovered as surface remains in Godinjske Bare who were the victims of the killings near Trnovo.[2583]

591. Of the 1,683 identified Srebrenica victims referred to who were not explicitly the basis for any of the findings in relation to the allegations in paragraphs 21.1–22.4 of the Indictment, the Chamber finds that Bosnian Serb Forces killed otherwise than in combat a total of 830 Srebrenica victims (that is, 734 Srebrenica victims identified in Glogova 1 and 2 and the associated secondary graves and 96 identified Srebrenica victims at other gravesites).

6. Number of Bosnian Muslims Who Died as a Result of Combat, Suicide, and Other Causes.

592. The Chamber has evidence before it that a number of Bosnian Muslims died as a result of combat activities, suicides, land mines, and other causes. In a video in which members of the column are talking, figures of around 2,000 to 3,000 are given as the number killed in the course of the breakout.[2584] A report from UNPROFOR Civil Affairs dated 17 July 1995 states that those who had arrived at the Tuzla Air Base from Srebrenica had said that up to 3,000 of those who left Srebrenica were killed on the way mostly by mines and engagement with the VRS and that other

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2579 Ex. P00170, pp. 43–46.

2580 Richard Butler, T. 17405 (29 August 2011) (testifying that it is difficult to come up with a total for the surface remains given the wide area that the actual column traversed and the fact that some parts were mined and even to this day may not be accessible).

2581 Ex. P00170, p. 43.

2582 Dušan Janc, T. 14677–14682, 14717 (26 May 2011).

2583 Ex. P00170, pp. 37–39. Of the remaining 70 in the category of "Others", 18 were recovered in Serbia; 14 as surface remains on the bank of the Drina river several hundred metres from the primary mass grave of Kozluk; and a further 38 were in unclassified sites. *Ibid.* Those recovered in Serbia may well not have been killed by Bosnian Serb Forces. The Chamber considers it very probable that those found as surface remains near the Kozluk mass grave site were killed by Bosnian Serb Forces otherwise than in combat, but since no evidence is available as to the condition of the bodies or the circumstances in which the victims died, the Chamber does not find that this is the case. The Janc Report of April 2010 states that it is not possible to determine whether the 38 Srebrenica victims recovered from uncategorized sites have been exhumed from graves or collected from the ground because of the lack of documentation. Ex. P00170, p. 39. The Chamber cannot therefore make a finding as to the circumstances in which these persons died.

2584 Ex. D00280, 00:12:09–00:12:30, 00:17:00–00:17:57, p. 1; Ratko Škrbić, T. 18965–18967, 18972 (8 February 2012). *See also* Ex. D00122, p. 86.

reports state that between 2,000 and 3,000 were taken to the stadium in or near Bratunac where they were separated into groups of military and civilian personnel.[2585]

593. The Chamber considers that the assessments in the video and the UNPROFOR report should be treated with caution because they were made immediately after the fall of Srebrenica when information on the overall sequence of events affecting the column was still patchy. Moreover, individual members of the column were only in a position to make rough estimates of the number of persons killed by military action on the part of Bosnian Serb Forces.[2586]

594. The demographic and forensic evidence assembled in this section together with the mass of testimony relating to many specific episodes that led to killings provide a much firmer basis for findings as to what happened to the Srebrenica-related missing. The Chamber finds that while the deaths of some of them can be attributed to combat and some to individual cases of suicide and other causes,[2587] the Majority considers that these were very much a minority.[2588]

7. Total Number of Srebrenica Victims Killed by Bosnian Serb Forces Otherwise Than in Combat

595. A calculation will now be made of the total number of Srebrenica victims killed by Bosnian Serb Forces otherwise than in combat. The inclusion of the 830 Srebrenica victims who were not explicitly the basis for any of the findings on the numbers killed as alleged in paragraphs 21.1–22.4 of the Indictment requires an adjustment to be made to avoid double counting. The additional 734 Srebrenica victims identified at Glogova 1 and 2 and all the related secondary graves who were not killed at Kravica Warehouse include those taken from Bratunac town, in particular from near the Vuk Karadžić school. Therefore the five Srebrenica victims at Kravica Supermarket, the one Bosnian Muslim taken from the bus at the Vuk Karadžić school and the 45 Bosnian Muslims who were held inside and outside the Vuk Karadžić school will be excluded from the calculation.

596. With these considerations in mind, the Majority, Judge Nyambe dissenting, calculates that the total number of Bosnian Muslims killed by Bosnian Serb Forces otherwise than in combat in the

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2585 Ex. P00588, p. 2.

2586 Dušan Janc, T. 14708–14709, 14711–14712, 14715 (26 May 2011); Ex. D00268, p. 2; Ex. D00269, p. 2; Ex. D00270, p. 1; Ex. D00271, p. 1.

2587 Ex. D00280, 00:17:00–00:17:57, 00:33:02–00:33:48, pp. 1–2; Richard Butler, T. 17398, 17408 (29 August 2011). *See also supra* paras. 315–321. Butler testified that there were reports of killings in the column in the form of suicides and perhaps killings of seriously injured soldiers who were not expected to survive. Richard Butler, T. 17608 (29 August 2011). There is also some evidence of infighting among the members of the column. PW-063, T. 6525 (19 October 2010); Predrag Čelić, Ex. P01633, PT. 13504 (28 June 2007).

2588 Judge Nyambe considers that the Chamber does not have the evidence before it to make the finding that these deaths constituted a minority of the Srebrenica-related missing.

aftermath of the fall of Srebrenica is at least 5,749.[2589] The basis for this conclusion is given in the Table 2 below.

TABLE 2: TABLE SHOWING THE BASIS FOR THE CALCULATION OF THE TOTAL NUMBER OF BOSNIAN MUSLIMS KILLED BY BOSNIAN SERB FORCES OTHERWISE THAN IN COMBAT IN THE AFTERMATH OF THE FALL OF SREBRENICA

AS ALLEGED IN PARAGRAPHS 21.1–22.4 OF THE INDICTMENT	
Bosnian Muslim in Potočari	1
Bosnian Muslims questioned at the Bratunac Brigade Headquarters	1
Jadar River site	15
Cerska Valley site	150
Kravica Warehouse	600
Grbavci School in Orahovac	830
Petkovci site	809
Kozluk site	761
Kula School site	9
Branjevo Military Farm and Pilica Cultural Centre sites	1656
Nezuk site	3
Bosnian Muslims taken from Milići Hospital	10
The site near Snagovo	4
Bosniam Muslims who had survived the events at Branjevo Military Farm	4
Bišina site	39
The site near Trnovo	6
Bosnian Muslims held at Luke School near Tišća	21
OTHERS IDENTIFIED IN THE JANC REPORT OF APRIL 2010	
Others identified at Glogova 1 and 2 and the related secondary graves	734
Others identified at various other gravesites	96
TOTAL NUMBER FOUND TO HAVE BEEN KILLED	5749

[2589] *See supra* n. 2587. While Judge Nyambe agrees that 5,749 Srebrenica victims lost their lives, she does not agree that all of them were killed by Bosnian Serb soldiers, because this number may include, in her view, persons who committed suicide or were killed in infighting and in other ways. Therefore the number that she considers

597. It should be stressed that 5,749 is the minimum number killed and that the actual figure can be expected to be significantly higher. This is partly because of incomplete information about the number missing and partly because the process of exhumation and identification has not been completed. Moreover, the Majority again notes that it has taken a conservative approach when calculating the total number killed. To this end, where the Majority could not determine either the precise number killed or an approximation in the form of a range, the Majority has not included these killings when calculating the total number killed. Similarly, where the Majority has found a range of numbers of victims, it has taken the minimum number of people it believes beyond a reasonable doubt to have been killed by Bosnian Serb Forces.

VI. THE EVENTS IN ŽEPA IN JULY 1995 AND THEIR AFTERMATH

A. Military Action against Žepa and Negotiations (Early July–24 July 1995)

1. Geographical Location and Municipal Organisation of the Žepa Enclave

598. The Žepa enclave was situated beside the Drina River in Eastern BiH.[2590] The centre of Žepa is in a depression at an altitude of 500 to 600 metres above sea level.[2591] There is a mountain with a height of more than 1,500 metres to the north of Žepa, and a plateau to the south approximately 1,000 metres above sea level.[2592] The centre of Žepa is approximately 20 kilometres from Srebrenica town as the crow flies and for a while the two enclaves bordered each other.[2593] Due to Žepa's geography, its well-delineated natural borders and naturally defined entrances, it could be controlled so that tanks could not easily enter.[2594]

599. Before the war, Žepa was gazetted as a village with a population of less than 3,000.[2595] By July 1995, however, the population grew until between approximately 6,500 and 10,000 people were in the Žepa area because Bosnian Muslims arrived from other municipalities in Eastern BiH such as Han Pijesak, Višegrad, Rogatica and Vlasenica.[2596] During the conflict the population of

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conclusively to have been murdered by the Bosnian Serb Forces were those associated with ligatures or blindfolds and those killed in Kravica Warehouse; but there might in her view be more.

2590 Hamdija Torlak, T. 4254 (23 August 2010); Ex. P00107; Ex. P00104, p. 11 (map of Žepa, including VRS intelligence on the ABiH and UNPROFOR); Ex. P00762 (a map of Žepa and its surrounding area, such as Stitkov Dol).

2591 Hamdija Torlak, T. 4254–4255 (23 August 2010).

2592 Hamdija Torlak, T. 4255 (23 August 2010).

2593 Ex. P00104, pp. 5–6, 10; Hamdija Torlak, T. 4255 (23 August 2010). *See also* Hamdija Torlak, T. 4510–4511, 4513–4514 (26 August 2010); Ex. D00086; Ex. D00087.

2594 Hamdija Torlak, T. 4344 (24 August 2010). *See also* Milomir Savčić, Ex. P02418, PT. 15331 (13 September 2007).

2595 Ex. P00580, p. 3.

2596 Hamdija Torlak, T. 4260, 4263 (23 August 2010) (testifying that approximately 7,000 people lived in Žepa in July 1995); Hamdija Torlak, T. 4602 (30 August 2010); Ex. P00580, p. 3 (indicating about 10,000 people in Žepa); Esma Palić, T. 13284 (26 April 2011) (estimating that around 8,000 people were in Žepa before it fell in July

Žepa consisted entirely of Bosnian Muslims.[2597] Žepa's municipal life at that time was organised by a War Presidency[2598] which comprised Mehmed Hajrić, the Mayor of the municipality and President of the War Presidency,[2599] Hamdija Torlak, the President of the Executive Board,[2600] Colonel Avdo Palić, the Commander of the ABiH Žepa Brigade, which was based in and operating out of Žepa,[2601] Amir Imamović, the head of the Civil Protection Unit,[2602] and Hurem Sahić, the head of the Civilian Police Unit.[2603]

2. Military Action against Žepa (Early July)

600. In early July 1995, the VRS attack against Žepa commenced resulting in wounded civilians and over 30 destroyed houses in the surrounding villages.[2604] Already on 27 June, most of the UNPROFOR OPs around Žepa[2605] were attacked by VRS mortar fire and Rajko Kušić, the Commander of the Rogatica Brigade which manned the lines in front of Žepa[2606], warned that the

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1995); Ex. P00595, p. 6 (indicating that approximately 6,500 people were living in Žepa at the time of the attack on 9 July 1995). *See also* Hamdija Torlak, T. 4280, 4307–4308 (23 August 2010) (further testifying that in July 1995 approximately 1,200 able-bodied men were in the Žepa enclave, of whom approximately 600 were considered combatants and possessed weapons).

2597 Esma Palić, T. 13282–13283 (26 April 2011) (testifying that everybody except two female teachers was a Bosnian Muslim); Hamdija Torlak, T. 4307 (23 August 2010) (testifying that there was one woman who was not Muslim).

2598 The War Presidency was set up pursuant to laws that had been taken over from the SFRY. Hamdija Torlak, T. 4257 (23 August 2010).

2599 The president of the War Presidency was the most important individual in a certain town or area and was responsible for coordinating the work of the executive committee, the civilian police, and the civilian protection. He was further responsible for communications with international organisations and UNPROFOR. Hamdija Torlak, T. 4258–4259, 4266 (23 August 2010), T. 4541, 4551 (30 August 2010). The President of the War Presidency was also referred to as the mayor of Žepa. Hamdija Torlak, T. 4259 (23 August 2010). Hajrić also functioned as a hodža, a religious official and leading person in a mosque who performed religious services. Hamdija Torlak, T. 4258 (23 August 2010).

2600 The Executive Board was responsible for the civilian population, the organisation of schools, health care, accommodation, and the distribution of humanitarian aid. Torlak was the President of the Executive Board from May 1993 until April 1995. Hamdija Torlak, T. 4256, 4257, 4260 (23 August 2010). The President of the Executive Board was also referred to as deputy mayor. Hamdija Torlak, T. 4259 (23 August 2010).

2601 Palić was the Commander of the 1st Light or 285th Žepa Brigade ("Žepa Brigade") "on the strength of" the 28th Division which was present in Žepa. Torlak understood that he was directly subordinated to Naser Orić, the Commander of the 28th Division. Hamdija Torlak, T. 4261, 4267–4268 (23 August 2010).

2602 The Civilian Protection Unit was responsible for assisting the population, particularly in the construction of small residential dwellings. Hamdija Torlak, T. 4260–4261 (23 August 2010).

2603 Hamdija Torlak, T. 4257–4261 (23 August 2010). Throughout the war, Hurem Sahić was chief of the Civilian Police Unit, which was a separate organisational unit within the War Presidency. Hamdija Torlak, T. 4261 (23 August 2010).

2604 Ex. P02103. *See also* Ex. P00580, p. 2 (indicating that sporadic artillery, mortar and heavy machine gun fire was directed particularly at Žepa town).

2605 *See supra* para. 170.

2606 *See supra* para. 137; Hamdija Torlak, T. 4293–4294 (23 August 2010). *See also* Edward Joseph, T. 10775–10776 (3 March 2011).

attacks would continue until UNPROFOR agreed to leave the enclave altogether.[2607] After this ultimatum, the VRS continued to attack various UNPROFOR OPs in the Žepa enclave.[2608]

601. On 8 July 1995, UNPROFOR released to the ABiH 127 weapons that were seized following the demilitarisation agreement of 8 May 1993 and which were considered to be of no significant military value.[2609]

602. On 10 July, as a result of the success of the VRS's attack on Srebrenica "and in order to close the Žepa enclave and improve the tactical position of our forces around the enclave," Mladić issued an order to the Drina Corps and the 65th Protection Regiment to take military action against Žepa on 12 July 1995.[2610] Furthermore, during a meeting held in the morning of 12 July at the Bratunac Brigade Headquarters, where, amongst others, Pandurević and Trivić were present,[2611] Mladić ordered Krstić to prepare the operation to "liberate" Žepa.[2612]

603. Following the fall of Srebrenica, Žepa was in a state of panic; the RS media announced that Žepa would be taken straight away; and Mladić expected the ABiH units to surrender within 48 hours.[2613] Due to the ensuing chaos in Žepa amongst the civilian population, Avdo Palić requested their protection through UNPROFOR and threatened to kill UNPROFOR soldiers "if they did nothing to help defend the pocket."[2614]

2607 Ex. P00583, pp. 1, 4. The UNPROFOR company base which was located in the middle of Žepa was also targeted; Ex. P00583, p. 4.

2608 Ex. P00580, p. 3. Early in the week ending Saturday 15 July, the VRS tried to force UNPROFOR out of OP 9 located in the southern end of the enclave, and attacked OPs 1, 2 and 3 located at the south-western part. *Ibid. See also* Ex. P00104, p. 13 (indicating the locations of the various OPs in Žepa with circled numbers).

2609 Ex. P00580, p. 2.

2610 Ex. P02517, pp. 1–2.

2611 Mirko Trivić, Ex. P01197, PT. 11837–11841 (21 May 2007), PT. 11974–11975 (23 May 2007). *See supra* para. 317.

2612 Mirko Trivić, Ex. P01197, PT. 11841–11842 (21 May 2007). Pandurević and Trivić proposed that the troops that had been engaged in Srebrenica should be rested and replaced, but that was overruled by Mladić. Mladić, however, agreed to address the troops the following day before the commencement of the operation in Žepa in order to boost morale. Mirko Trivić, Ex. P01197, PT. 11842–11843 (21 May 2007). *See also* Ex. P01444, p. 28. In the morning of 13 July 1995, between 10:00 and 11:00 a.m., Mladić indeed addressed the troops in the Jahorina area. Mirko Trivić, Ex. P01197, PT. 11853–11854 (21 May 2007). *See also* Ex. P01444, p. 28 (Trivic's diary translation reads in part: "By 0800 hours tomorrow, General Kostić [*sic*] must prepare a decision for the liberation of Žepa!" The Chamber notes that the name Kostić appears only in the translation. "Krstić" appears in the BCS original.). On 13 July 1995, Krstić issued the order on the attack of Žepa. *See infra* para. 612.

2613 Ex. P00580, p. 2. *See also* Esma Palić, T. 13288, 13292 (26 April 2011) (testifying that when Srebrenica fell this automatically meant that Žepa would fall and the population was "very much aware of that" and that's why "hell broke loose"); PW-013, T. 9868 (14 February 2011) (testifying that there was a lot of fear and panic that the Bosnian Serb Forces might enter Žepa and kill everyone, including women and children).

2614 Ex. P00580, p. 2; Esma Palić, T. 13308 (27 April 2011).

3. First Meeting between the VRS and the Bosnian Muslims at Bokšanica (13 July)

604. Throughout July 1995, a series of meetings were held at Bokšanica between the VRS and the Bosnian Muslims.[2615] Bokšanica was the location of the UNPROFOR OP2 on the southern side of the Žepa enclave.[2616]

605. On 13 July, upon "invitation" by the VRS to engage in negotiations regarding the "evacuation" of the civilian population of Žepa, a first meeting was held around noon in Bokšanica between two representatives of the War Presidency, Mujo Omanović, and Hamdija Torlak, and two representatives of the VRS, the Accused and Kušić.[2617] The invitation for this first meeting was transmitted to Palić through Colonel Sejmon Dudnjik, the Commander of UKRCoy,[2618] on 12 July 1995.[2619] Palić kept postponing the meeting during the night because of ongoing consultation with the BiH political leadership in Sarajevo.[2620]

606. Having received the invitation through Dudnjik, the War Presidency met to discuss the request, first trying to establish communication with BiH President Alija Izetbegović and ABiH Commander Rasim Delić because, in principle, the local authorities could not engage in negotiations without their approval; however, in the end, as far as Torlak remembers, they independently decided that irrespective of their position, they would attend the talks because it was their fate at stake.[2621] Omanović and Torlak were chosen to attend the meeting and were transported to Bokšanica in an UNPROFOR vehicle.[2622]

607. At the outset of the meeting, the Accused, according to Torlak, said words to the effect of:

> Srebrenica has fallen and now it's Žepa's turn. We can go about it in two ways. What I'm offering you is for all of you to leave Žepa, to be evacuated, get on the buses and leave.[2623]

2615 *See infra* Chapter VI. A. 3., Chapter VI. A. 5., Chapter VI. A. 8.

2616 Hamdija Torlak, T. 4292 (23 August 2010); Ex. P00104, pp. 12–13 (maps indicating the location of OP2, which is referred to as "Bokšanica Check Point"). At that time, the OP was also the border of the Žepa enclave. Hamdija Torlak, T. 4292 (23 August 2010).

2617 Hamdija Torlak, T. 4289–4292 (23 August 2010).

2618 *See supra* para. 170.

2619 Hamdija Torlak, T. 4289–4290 (23 August 2010).

2620 The VRS started to believe that the leadership in Sarajevo was having a negative influence on the decisions of the Žepa War Presidency warning them not to accept Bosnian Serb propaganda and telling them that they would be adequately protected by the international community. Ex. P00127, p. 1; Ex. P00144, p. 1.

2621 Hamdija Torlak, T. 4289–4291, 4296–4297, 4306–4307 (23 August 2010), T. 4615–4616 (30 August 2010). *See also* Louis Fortin, T. 3077 (23 June 2010); Ex. P00596, p. 2; Ex. P00127, p. 1; Ex. P00144, p. 1.

2622 Hamdija Torlak, T. 4290, 4292, 4293 (23 August 2010). Enver Hadžihasanović, ABiH Chief of Staff, sent a letter to the President of the War Presidency at 10:50 a.m. on 13 July advising that negotiations should not take place and that Žepa should continue with an organised resistance; however, Torlak did not receive this response before leaving for Bokšanica. Hamdija Torlak, T. 4296–4297, 4306–4307 (23 August 2010), T. 4653–4654 (31 August 2010); Ex. P00734, p. 1. *See also* Ex. P00595, p. 7; Ex. P00491.

2623 Hamdija Torlak, T. 4294 (23 August 2010).

608. The Bosnian Muslim representatives said that they were authorised to resolve the problem of Žepa peacefully with the following guarantees:

> 1. They should be allowed three days within which to consult the population of Žepa and the leadership in Sarajevo about the decision to leave Žepa and move to the destination of their own choosing;
>
> 2. They should be allowed to relocate all civilians and the able-bodied population;
>
> 3. The evacuation from Žepa should be carried out in the presence of UNPROFOR, UNHCR, ICRC and military observers;
>
> 4. They should have guarantees of safe transportation via RS territory from the RS and VRS Main Staff leadership;
>
> 5. Persons who chose to stay in the territory should be allowed to do so.[2624]

609. The VRS rejected the request for the first guarantee and required all necessary consultations to be completed by 3:00 p.m. that day, when the "evacuation" had to start.[2625] The only alternative presented by the Accused to the "evacuation" of Žepa was the use of military force against the enclave.[2626] The VRS guaranteed the "evacuation" of all the civilian population and the "military aged men"[2627] who surrendered their weapons, as well as the safety of civilians who decided to stay and accept RS authority.[2628] In fact, during the meeting, the Accused did not treat it as a problem if men wanted to leave together with their families or if people wanted to stay in Žepa provided that they accepted RS authority.[2629] The VRS demanded that the Bosnian Muslim able-bodied men be registered and exchanged with Bosnian Serb POWs.[2630] The Accused warned that in case the ABiH were to continue postponing the deadline for "evacuation" the VRS would demand that it keep some able-bodied men.[2631]

610. As Torlak and Omanović were not authorised to make any decisions, it was agreed that they would convey the demands to the other members of the War Presidency and send a reply through

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2624 Ex. P00491, p. 2.

2625 Ex. P00491, p. 2.

2626 Hamdija Torlak, T. 4294, 4307 (23 August 2010), T. 4842 (2 September 2010); Ex. P00491, p. 2 (stating that the VRS had indicated that the alternative solution to the commencement of the evacuation at 3:00 p.m. was military force).

2627 The Chamber notes that while the terms "able-bodied men" and "military aged men" have different meanings, they are often interchangeably used in the evidence. The Chamber will therefore, in most instances, refer to the specific wording used by the witness.

2628 Ex. P00491, p. 2.

2629 Hamdija Torlak, T. 4294 (23 August 2010); Ex. P00491, p. 2. Ten families at first wanted to stay, which the Accused accepted without preconditions. These ten families were then discussed later at the 19 July meeting, but in the end everyone left the enclave. Hamdija Torlak, T. 4648–4651 (31 August 2010).

2630 Ex. P00491, p. 2. This demand, according to the Accused, "was a tactical move so that during the follow-up discussions, which they conditioned with consultation with their leadership in Sarajevo, we could turn down any possible counter-argument". *Ibid.*

2631 Ex. P00491, p. 3. The Bosnian Muslims requested an extension of the deadline from 3:00 p.m. of 13 July 1995 until noon of the following day; however, the VRS did not let them change the deadline. Ex. P00491, pp. 2–3. *See also* Ex. P00596, p. 2.

Dudnjik.[2632] Torlak and Omanović then returned to Žepa where a meeting of all the members of the War Presidency was held and a decision was made not to accept the proposal of the Accused mainly because of fear for the lives of the able-bodied men.[2633] Dudnjik informed the VRS about this decision.[2634]

611. Before he received the decision, the Accused updated Mladić and Krstić on the situation in the Žepa enclave in a report of 13 July, stating that if the ABiH rejected the process of evacuation and the weapons surrender under the conditions that had already been set, the VRS would plan to start combat activities.[2635] He suggested the engagement of forces from the Srebrenica front to take over Žepa within 21 hours in order to avoid "the condemnation and reaction by the international community".[2636] The Accused also added that he believed that it would be possible to accomplish this with planned and organised actions, since the VRS had completely disorganised the system of the Bosnian Muslims by its past actions and civilians had already started gathering around UNPROFOR checkpoints and bases.[2637]

4. The Attack on Žepa (14 to 19 July)

612. Following the rejection of the VRS proposal, on 14 July 1995, the military operation against Žepa commenced with shelling.[2638] The attack was ordered in the so-called "Stupčanica 95 order" which provided a detailed operational plan listing the objectives and tasks for the individual units that were to be engaged in the attack against the Žepa enclave.[2639] The VRS shelled the centre of

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2632 Hamdija Torlak, T. 4294–4295 (23 August 2010).
2633 Hamdija Torlak, T. 4340 (24 August 2010).
2634 Hamdija Torlak, T. 4340 (24 August 2010), T. 4656 (31 August 2010).
2635 Ex. P00145, p. 2; Ex. P00123, p. 2.
2636 Ex. P00145, p. 2; Ex. P00123, pp. 2–3.
2637 Ex. P00145, p. 2; Ex. P00123, pp. 2–3.
2638 Ex. P00580, p. 2; Hamdija Torlak, T. 4341 (24 August 2010), T. 4845 (2 September 2010) *See also* Ex. P01603, p. 2 (a report by Krstić dated 14 July stating, *inter alia*, that in order to liberate the Žepa enclave part of the VRS forces will block the Žepa enclave and force the enemy to surrender). Shortly before the attack started, the VRS demanded that UNPROFOR should evacuate its OPs in the safe area as the attack against it would begin at 2:00 p.m. that day. Ex. P00580, p. 2. UKRCoy however remained in position and shortly after 3:00 p.m. the military operation against Žepa, commanded by Krstić, commenced. Ex. P00580, p. 2; Ex. P00124, p. 2; Ex. P00146, p. 2. (a report to, *inter alia*, the Drina Corps and Krstić personally of 14 July 1995, in which the Accused reports that units of the Rogatica Brigade and elements of the 65th Protection Regiment had been in combat readiness since 8:00 a.m.). *See also* Mirko Trivić, T. 8583 (7 December 2010). *See also* Richard Butler, T. 16708 (14 July 2011). Torlak testified that the attacks already started on the evening of 13 July. Hamdija Torlak, T. 4341 (24 August 2010), T. 4845 (2 September 2010). However, the evidence assembled here points to them having started on the following day.
2639 Ex. P01225, p. 1 (ordering the combat readiness for all Bosnian Serb Forces for 8:00 a.m. on 14 July 1995). The Stupčanica 95 order which was sent by Krstić to the Drina Corps IKM and various VRS Commands, further detailed that the Bosnian Muslim civilian population and UNPROFOR were not the targets of the operation, but were to be collected together and kept under guard while the armed Bosnian Muslim groups were to be crushed and destroyed. Involved in the attack on Žepa were, *inter alia*, the 1st Milići Light Infantry Brigade, the Bratunac Brigade, the 1st Vlasenica Light Infantry Brigade, the 5th Podrinje Light Infantry Brigade, and the Zvornik Brigade. Ex. P01225, p. 4.

Žepa and the surrounding villages and managed to take full control over OP2 at Bokšanica.[2640] Attacks by the VRS also came from the direction of Rogatica in the south and Godjenje on the south-western side of the enclave.[2641] Dudnjik and the VRS reached an agreement by which the VRS would refrain from attacking UNPROFOR positions under the condition that UNPROFOR would not open fire on the VRS combat formation.[2642] Dudnjik also requested that his current positions be left where they were and promised in return to provide the VRS with information on "enemy activity" and not to request NATO air support.[2643]

613. On that first day of the VRS attack against Žepa, 14 July, the War Presidency decided that there should be a "general mobilisation" of the population on the territory of Žepa municipality.[2644] In this decision the War Presidency ordered that "[a]ll available resources will be used for defence purposes", that "[a]ll citizens who are fit for work will be put at the disposal of the Žepa municipal Civilian Protection Staff", and that all persons who are fit for military service will be placed at the disposal of the ABiH.[2645] Hajrić reported to Izetbegović personally on 15 July that the general mobilisation had been implemented.[2646] Palić was in charge of organising the armed resistance of the ABiH in Žepa.[2647]

614. On 15 July, UNPROFOR Civil Affairs reported in a situation report widely distributed within UNPROFOR that Žepa would fall very soon and that the inhabitants would be relocated by the Bosnian Serbs, as the people of Srebrenica had been.[2648] The VRS shelling on Žepa and around the OPs, including artillery and mortar attacks, continued.[2649] During this period, the people of

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2640 Hamdija Torlak, T. 4342 (24 August 2010); Ex. P00492, p. 1; Ex. P00124, p. 2 (in which the Accused reports that OP2 was put under VRS control and that these activities have the aim "to control the work and the reports that UNPROFOR is making to their superior command"); Ex. P00129, pp. 1–2; Ex. P00149, pp. 1–2. On the same day, after Smith learned that Mladić had ordered the attack on the enclave, he sent a letter of protest to Mladić to remind him that Žepa was a safe area and that an attack would amount to a violation of UN Security Council Resolutions 836 and 1004. Smith demanded maximum abstention from the attack on the enclave and wrote that he would feel free to recommend the use of NATO air support to meet his obligations. Ex. P02087. *See also* Rupert Smith, T. 11577 (21 March 2011), T. 11799 (24 March 2011), T. 11901–11904 (28 March 2011); Ex. P02133, p. 3; Ex. P02135.

2641 Hamdija Torlak, T. 4343 (24 August 2010); Ex. D00050, p. 20 (stating that UNPROFOR received reports of heavy fighting between the warring parties around OP 1 which was located at Brezova Ravan).

2642 Ex. P00492, p. 1 (which reads that such an agreement was reached with the UNPROFOR Commander at OP2). The UNPROFOR Commander at OP2 was Dudnjik. Hamdija Torlak, T. 4273–4274 (23 August 2010), T. 4585 (30 August 2010). *See supra* para. 170. The Bosnian Muslims attacked the UNPROFOR OPs 1, 5, 7 and 8. Louis Fortin, Ex. P00587, PT. 18369 (28 November 2007); Ex. D00050, p. 20. *See also* Ex. P00129, p. 1, Ex. P00149, p. 1 (listing the 10 UNPROFOR OPs in and around Žepa and their exact locations). *See also* Ex. P00104, p. 13 (map depicting the locations of the OPs).

2643 Ex. P00492, p. 1.

2644 Ex. D00102. *See also* Hamdija Torlak, T. 4656–4663 (31 August 2010).

2645 Ex. D00102.

2646 Ex. D00103.

2647 Hamdija Torlak, T. 4342 (24 August 2010); Ex. P00124, p. 1; Ex. P00146, p. 1.

2648 Ex. P00580, p. 2.

2649 Ex. P02107 (an UNPROFOR situation report dated 16 July detailing the hours and duration of the VRS attack). In a letter to the VRS Main Staff dated 17 July 1995, Krstić wrote that the enemy forces gave strong resistance and that he got the impression that the ABiH were using UNPROFOR weapons in combat. The VRS forces engaged in

Žepa, frightened after what happened in Srebrenica, went for shelter to either Stitkov Dol or to the Žepa Mountain.[2650]

615. On 17 July, the Accused reported from the Drina Corps IKM at Krivače about a radio conversation between Kušić and Palić.[2651] The Accused noted in his report that during the conversation between Kušić and Palić it became apparent that:

> 1. He [Palić] is not allowed to make a decision about the evacuation without consultation with Sarajevo. He is forbidden to carry out the evacuation of Žepa.
>
> 2. He was promised by the authorities in Sarajevo that the situation in Žepa will be resolved positively by 18 July 1995.
>
> 3. He maintains contact with the UN Command in Sarajevo.
>
> 4. He seized all UN hardware and he uses it for combat.[2652]

According to the Accused's report, Kušić again requested that Palić disarms his troops, surrenders the weapons and starts the evacuation of the civilians, which Palić refused.[2653] The Accused also reported that Palić's requests for the UNPROFOR Commander to come to Žepa and for there to be an immediate ceasefire were not accepted by the VRS either.[2654] Hence, fighting continued.[2655]

616. On 19 July 1995, at which time the ABiH was still in control of Brezova Ravan—an important location for defence purposes on the road between Žepa and Bokšanica—the VRS suddenly stopped its attack because new "negotiations" were entered into.[2656] A meeting was held between Mladić, the Accused, and VRS liaison officer Lieutenant Colonel Milenko Indić[2657] and

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the attack were able to reach the line of Kozlova Glava, Ljubomišlje, Brložnik, Kličevac and Stublić by 9:00 p.m. on 17 July. Krstić informed the Main Staff that he had decided to put the combat positions at this newly reached line and to continue the powerful attack and take Žepa as soon as possible. Ex. D00156. Also on 17 or 18 July 1995 the family house of Palić was shelled. Esma Palić, T. 13289 (26 April 2011). The house was hit by about five shells. Esma Palić, T. 13290 (26 April 2011); Ex. P02192. Palić was not with his family during the day but heard the order being issued "[t]arget the house of the boss's mother-in-law." His wife, Esma Palić, believes that he received this information from intercepts of radio communications of the VRS. Esma Palić, T. 13290 (26 April 2011).

2650 Esma Palić, T. 13302–13303 (26 April 2011), T. 13306–13308 (27 April 2011) (testifying that chaos ensued and that women, small children and elderly went for shelter to the mountains, that no soldiers or able-bodied men went with them and that only Amir Imamović, president of the civilian protection of Žepa and Hamdija Torlak, civilian member of the War Presidency, were at Stitkov Dol on several occasions); Nesib Salić, T. 13231–13233 (21 April 2011). *See also* Hamdija Torlak, T. 4350, 4375 (24 August 2010); Milomir Savčić, Ex. P02418, PT. 15332 (13 September 2007); Ex. P00124, p. 1; Ex. P00146, p. 1.

2651 Ex. P02207.

2652 Ex. P02207.

2653 Ex. P02207.

2654 Ex. P02207.

2655 Hamdija Torlak, T. 4343 (24 August 2010).

2656 Mirko Trivić, Ex. P01197, PT. 11868 (21 May 2007); Hamdija Torlak, T. 4343, 4368 (24 August 2010), T. 4692 (31 August 2010) (testifying that suddenly "the shelling stopped on the 19th, and a kind of eerie silence set in").

2657 Indić was a Sarajevo-Romanija Corps officer. Louis Fortin, Ex. P00586 (confidential), PT. 18276 (private session) (27 November 2007); Louis Fortin, Ex. P00587, PT. 18284 (27 November 2007). *See also* Thomas Dibb, T. 4876–4877 (2 September 2010).

Smith around noon at the Jela Restaurant in Han-Kram.[2658] At the end of the meeting, both sides signed an agreement which included the issue of the freedom of movement for UNHCR and UNPROFOR in Srebrenica and Žepa.[2659] It was plain to UNPROFOR that Mladić came with a clear intent to sign the agreement as opposed to real negotiating and none of the parties attached any serious importance to it as the talks were mainly regarded as part of a dialogue process.[2660] With regard to Žepa, Mladić said that the enclave had effectively fallen at about 1:30 p.m. on 19 July.[2661] In fact, however, the ABiH still held Žepa town and most of the enclave, but the VRS had penetrated into the enclave from the south west and was about 1.5 kilometres away from Žepa town itself.[2662] Mladić further informed Smith about a meeting with Dudnjik and the Bosnian Muslim representatives later that day that he had set up to arrange the "evacuation of refugees" from Žepa.[2663]

5. Meetings at Bokšanica following the Cessation of VRS Shelling (19–20 July)

617. On 19 July 1995, on the same day that, *inter alia,* Mladić, the Accused and Smith met at the Jela restaurant in Han-Kram as discussed above, Palić again received an "invitation" to resume the negotiations at Bokšanica.[2664] Instead of Palić, the War Presidency decided that Torlak and Benjamin Kulovac[2665] would attend the meeting.[2666] In the afternoon they were met by, amongst

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2658 Rupert Smith, Ex. P02086, PT. 17534 (6 November 2007); Ex. P01977, p. 2. Lieutenant-Colonel James Baxter and David Wood from UNPROFOR were also present at this meeting. Emma Sayer, T. 10970 (8 March 2011); David Wood, T. 11091–11092, 11095–11096 (10 March 2011); Ex. P00104, p. 12 (a map showing the location of the Jela Restaurant close to Han-Pijesak). At this meeting the relationship between the Accused and Mladić appeared to be very close, characterized by mutual respect. David Wood, T. 11092 (10 March 2011). On one occasion during the meeting, the Accused interrupted the process of forming the agreement because he wanted to change little things in it. Smith told Mladić that the Accused was what was called a "military shit" in the British army, that is, a professional officer who wants things to be done perfectly. Mladić laughed loudly at this and then held up his right arm, pointing it to the ceiling, saying that the Accused was like his right arm, and then took Indić's head under his arm, patted it and said that Indić is like his little toe, thereby making a contrast between the importance of the Accused and Indić. David Wood, T. 11092 (10 March 2011).

2659 David Wood, T. 11097 (10 March 2011); Ex. P01977, pp. 2, 5–6; Ex. P00603.

2660 David Wood, T. 11098–11099 (10 March 2011); Ex. P01977, pp. 2–4. As on several other occasions before, Smith also used this meeting to inquire about an estimated 2,000 men from Srebrenica who had been taken to Bratunac and were still unaccounted for. Mladić responded that Srebrenica was "finished in a correct way" but accepted that "some small incidents" had occurred. Rupert Smith, T. 11557 (21 March 2011). *See also* Emma Sayer, T. 10967 (8 March 2011).

2661 Ex. P01977, p. 4.

2662 Ex. P01960, p. 2. *See also* Ex. P02098, pp. 1–2 (noting that the BiH leadership in Sarajevo also denied that Žepa had already surrendered).

2663 Ex. P01977, p. 4.

2664 Hamdija Torlak, T. 4343, 4345–4346 (24 August 2010). Torlak and Palić went to the UNPROFOR headquarters in Žepa where they talked over the radio with Mladić who was at Bokšanica and it was agreed to resume the negotiations at OP2 at Bokšanica. Hamdija Torlak, T. 4346 (24 August 2010); Ex. P02798, Disc 4, 00:04:45–00:18:08, pp. 111-115 (capturing Mladić's side of this conversation). During the radio conversation Mladić threatened that this would be the last chance for the ABiH to negotiate with the VRS and that if the ABiH would refuse they would "sign a death sentence for everyone in the territory controlled by [them]". Ex. P02798, Disc 4, 00:10:00–00:10:10, p. 113.

2665 Benjamin Kulovac was the first War Presidency president in 1993. Hamdija Torlak, T. 4257–4259, 4266 (23 August 2010), T. 4541 (30 August 2010).

others, Mladić, the Accused and Dudnjik at Bokšanica.[2667] Prior to the meeting, the War Presidency had agreed internally to try to make arrangements with the VRS for the "evacuation of the civilian population", however, with regard to the ABiH and the able-bodied men, things were less clear.[2668] Torlak testified that in fact they "wanted to wait to see how the Serbian side perceived that matter" especially because the defence lines in Žepa were still stable and none of the key points had yet fallen.[2669] Mladić then dictated that the wounded would be evacuated first, followed by women and children and the elderly and that the logistics of the transport, including the buses, trucks and fuel would be arranged by the VRS.[2670] The "evacuation" was scheduled to commence the next morning at 10:00 a.m.[2671]

618. Although the Bosnian Muslim representatives were not authorised to negotiate on behalf of the ABiH, Mladić demanded that the able-bodied men surrender their weapons to UNPROFOR and be registered by the ICRC or UNPROFOR, and that there would be an exchange on the principle of "all-for-all".[2672] The agreement was conditioned on the acceptance of the terms by the ABiH soldiers still remaining in the enclave.[2673] However, concerns remained on the Bosnian Muslim side

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2666 Hamdija Torlak, T. 4346 (24 August 2010). Torlak said he believed that Palić did not attend this meeting because he feared for his personal safety. Hamdija Torlak, T. 4462 (26 August 2010). They again travelled in a UNPROFOR vehicle to OP2. Hamdija Torlak, T. 4346 (24 August 2010).

2667 Hamdija Torlak, T. 4346–4347 (24 August 2010). *See also* Ex. P02798, Disc 4, 00:24:34–00:35:47, pp. 118-124 (video-recording of the meeting). In the video Torlak is wearing a short-sleeved white shirt sitting to the right of Kulovac who sported a beard. Hamdija Torlak, T. 4353–4354 (private session) (24 August 2010). At Ex. P02798, Disc 4, 00:24:41, the Accused is seated with his back to the camera wearing a military cap. Hamdija Torlak, T. 4363 (24 August 2010). At Ex. P02798, Disc 4, 00:35:02, Dudnjik is in the centre of the frame. Hamdija Torlak, T. 4369 (24 August 2010). At Ex. P02798, Disc 4, 00:35:19, the first man in uniform from the left is Mladić, then the Accused, then an officer of the VRS who Torlak thought was Colonel Kosorić. Hamdija Torlak, T. 4369 (24 August 2010).

2668 Hamdija Torlak, T. 4691–4693, 4697 (31 August 2010); Ex. P02798, Disc 4, 00:27:13–00:28:05, p. 119. While the War Presidency was in frequent contact with the BiH political leadership in Sarajevo regarding the negotiations, they felt that they did not receive clear answers and were left to their own means. Hamdija Torlak, T. 4343–4344 (24 August 2010), T. 4685–4686 (31 August 2010). The BiH President Alija Izetbegović sent a letter to ABiH Commander Rasim Delić on 18 July 1995 stating that a contingency plan to retreat from Žepa must be prepared and that the retreat should be organized by Palić using the paths through the woods. Ex. D00106. In a similar letter dated 19 July 1995 to the President of the War Presidency, Mehmed Hajrić, Izetbegović proposes a plan to move out as many civilians as possible while the troops should resist. Ex. D00054. The War Presidency however perceived the situation on the ground quite differently from the way it was interpreted in Sarajevo and hence decided to make their own decisions. Hamdija Torlak, T. 4707–4710 (31 August 2010).

2669 Hamdija Torlak, T. 4693, 4697 (31 August 2010).

2670 Ex. P02798, Disc 4, 00:27:13–00:29:13, pp. 119-120; Hamdija Torlak, T. 4347, 4370 (24 August 2010). The issue of the ten families that wanted to stay was again discussed during the second meeting; however, in the end they decided not to stay. Ex. D00108; Hamdija Torlak, T. 4648–4651 (31 August 2010); Ex. P02098, p. 1.

2671 Ex. P02798, Disc 4, 00:28:47–00:29:30, pp. 119-120; Hamdija Torlak, T. 4347, 4370–4371 (24 August 2010); Ex. P02098, p. 1. The first convoy with wounded and sick was planned for 10:00 a.m. on 20 July 1995, while a convoy with women and children was planned for 2:00 p.m. the same day. Ex. D00058, p. 2. *See also* Ex. P01435, p. 1 (an order on the transport of people and the removal of war booty, issued by Mladić on 19 July 1995 to the 27th Logistic Base Command and the Drina Corps Command, stating that the VRS shall secure one bus for the transport of the sick and wounded at 10:00 a.m. on 20 July 1995, and 50 buses for the transport of women and children as of 1:00 p.m. that day); Ex. P01436 (an urgent request for the mobilisation of motor vehicles by Krstić, dated 19 July 1995).

2672 Hamdija Torlak, T. 4347, 4370 (24 August 2010), T. 4692 (31 August 2010), T. 4805 (2 September 2010).

2673 Ex. P02098, p. 1; Ex. P00757, p. 1.

as to what would happen to the able-bodied men.[2674] There was a general belief that if taken prisoner by the Bosnian Serb Forces, one would not survive and the men from Žepa feared for their lives.[2675]

619. After the meeting, the War Presidency and the ABiH conveyed Mladić's demands to the BiH political leadership in Sarajevo and requested permission to exchange the able-bodied men of Žepa for 400 detained Bosnian Serb soldiers, who were held throughout the territory of the BiH, and to arrange helicopter transportation for the civilian population, except for the wounded, sick and elderly.[2676]

620. In the early morning hours of 20 July, Smith received a letter from Mladić stating that Žepa had surrendered and that the Bosnian Muslim representatives had accepted the VRS's conditions.[2677] Preparing to secure transportation, Mladić also asked for 50 trucks to transport the population of Žepa and five trucks of fuel for UKRCoy.[2678]

621. Loudspeakers were used that day in Žepa by the VRS calling the population to surrender.[2679]

622. Also on 20 July, Edward Joseph and his colleague Viktor Bezruchenko from UNPROFOR were sent to OP2 at Bokšanica where they met Mladić, together with some VRS soldiers and representatives of UNHCR and ICRC.[2680] During the meeting, Mladić again repeated the VRS's conditions for the evacuation of the enclave.[2681] They included an agreement on an all-for-all prisoners exchange throughout BiH, the evacuation of the wounded, the young, the old, and the women, and the surrender and registration as POWs of all men between the ages of 18 and 55 in the

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2674 Hamdija Torlak, T. 4370–4371 (24 August 2010). *See also* Louis Fortin, T. 3300, 3316 (29 June 2010) (testifying that what made it difficult to reach an agreement regarding an all-for-all exchange was the people taken from Srebrenica who were unaccounted for and had become a big issue for the Bosnians); Adjudicated Fact 581; Adjudicated Fact 582.

2675 Hamdija Torlak, T. 4348–4351 (24 August 2010).

2676 Hamdija Torlak, T. 4347–4348, 4369–4371 (24 August 2010), T. 4489–4491 (26 August 2010), T. 4729 (1 September 2010); Ex. D00058, p. 2 (a communication from the Žepa War Presidency to the authorities in Sarajevo stating, *inter alia*, that the issues regarding Žepa must be resolved with the RS by 6:00 a.m. the next day with the mediation of General Smith and that the fate of 7,000 people from Žepa, including 2,000 men fit for military service, was at stake).

2677 Ex. P02098, p. 3; Rupert Smith, Ex. P02086, PT. 17537 (6 November 2007).

2678 Ex. P02098, p. 3. *See also* Ex. P00562a (confidential); Ex. P00562b (confidential); Ex. P01435.

2679 Edward Joseph, Ex. P01949, PT. 14162 (23 August 2007) (testifying that the loudspeakers were constantly playing in a psychological operation by the VRS). *See also* Esma Palić, T. 13291 (26 April 2011). On 15 July the Accused had issued an order for the delivery of a 5,000 Watt loudspeaker van that was to be transported to the "Rogatica Garrison" by 3:00 p.m. on 16 July 1995. Ex. P00479.

2680 Edward Joseph, Ex. P01949, PT. 14154–14155 (22 August 2007), PT. 14160 (23 August 2007); Ex. P00757, p. 1.

2681 Ex. P00757, p. 1.

presence of ICRC and UNPROFOR.[2682] Mladić stated that his forces would resume their attack on the enclave at 7:00 p.m. that evening if the ABiH would not agree to his terms.[2683]

6. Meetings on an All-for-All Prisoner Exchange (Sarajevo, 20–21 July)

623. In the second half of July 1995, several meetings took place at Sarajevo Airport on the exchange of prisoners.[2684] On 20 July, talks were held there between Amor Mašović, the President of the BiH State Commission for the Exchange of Prisoners of War, and the authorised representatives of the VRS, led by Indić.[2685] Both sides agreed on an all-for-all prisoner exchange which included the release of all ABiH soldiers detained in Bosnian Serb prisons and camps including some new captives from Srebrenica and "the evacuation of everyone from Žepa who wishes to go".[2686] The agreement, however, was not signed as there were unresolved issues: the Bosnian Muslims sought from the VRS a list of men who were taken prisoner in the recent Bosnian Serb attack on Srebrenica and the VRS conditioned its consent on the compliance with the evacuation agreement, reached with the Bosnian Muslim representatives on 19 July 1995.[2687] It was agreed to resume negotiations the following day at 11:00 a.m. in an effort to finalise the agreement.[2688]

624. The follow-up meeting on 21 July 1995 at the Sarajevo Airport collapsed because the Bosnian Serbs refused to give any names of prisoners taken when they overran Srebrenica.[2689] On the evening of 21 July, it seemed to UNPROFOR Civil Affairs that there was a stand-off on the Žepa issue for the following reasons: the VRS wanted a complete capitulation of the ABiH forces in Žepa, but were willing to give very little in return; the VRS would not negotiate any deal with the ABiH in the enclave and rejected UNPROFOR or anyone else acting as intermediaries; the Bosnian Muslim leadership in Sarajevo wanted the ABiH to fight on and were not inclined to "sanctify a Serb take-over with an agreement"; the people of Žepa were caught in the middle—desperate to make a deal, "but not so desperate that they would defy Sarajevo".[2690] UNPROFOR Civil Affairs considered it unlikely that any evacuation of Žepa would commence within the next day or two and

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2682 Ex. P00757, pp. 1–2.
2683 Ex. P00757, p. 2.
2684 *See infra* paras. 624, 634–638.
2685 Ex. D00057, p. 1.
2686 Ex. D00057, p. 2.
2687 Ex. P01953, p. 3; Ex. P00757, p. 1. Apparently the VRS side worked from the assumption that the negotiations on the evacuation of Žepa would include everybody, including soldiers, whereas the ABiH understood the negotiations to only include vulnerable members of the population. Ex. P01960, p. 2.
2688 Ex. D00057, p. 1; Ex. P00757, p. 1.
2689 Ex. P02108, p. 23; Edward Joseph, T. 10544 (28 February 2011).
2690 Ex. P02108, p. 24.

warned that the VRS might now intensify its military pressure on the enclave in an effort to force the local military commander to accept their terms.[2691]

7. Resumed VRS Attack against Žepa (20–24 July)

625. By 20 July, the civilian population from "the southern parts" had already moved to "Žepa Mountain" while the VRS started to encircle the entire plateau".[2692] The War Presidency of Žepa did not start the evacuation that had been envisaged on 19 July, because the issue of the able-bodied men had not been resolved.[2693] The VRS side again interpreted this as a refusal to surrender and the military attacks were renewed on 20 July 1995.[2694] The attacks became fiercer and the shelling of Žepa intensified throughout until 24 July, focussing on the centre of the enclave, including the UNPROFOR base.[2695] Also the defence lines, especially the key summit of Brezova Ravan, came under heavy shelling from the south-western side of the enclave.[2696]

626. On 21 July, the Accused, who was then in Rogatica,[2697] proposed in a report to the Main Staff, personally to Miletić, about the situation in Žepa:

> We believe that it would be more favourable to hold direct negotiations after inflicting losses on the enemy's military personnel. We request the means for crashing the enemy's defense in the sectors of Brezova Ravan and Purtići. The best way to destroy them would be by using chemical weapons or aerosol grenades and bombs. Using these, we would /?accelerate/ the fall of Žepa and the surrender of Muslims. We will continue with combat activities using weapons for direct fire in order to penetrate along the above-mentioned axes. We believe that we could force Muslims to surrender sooner if we destroyed groups of Muslim refugees fleeing from the direction of Stublić, Radava and Brloška Planina.[2698]

2691 Ex. P02108, p. 24.

2692 Hamdija Torlak, T. 4372, 4379 (24 August 2010). *See supra* paras. 598, 614.

2693 Hamdija Torlak, T. 4369–4371 (24 August 2010).

2694 Hamdija Torlak, T. 4348, 4352 (24 August 2010); Ex. P01958. *See also* Hamdija Torlak, T. 4749 (1 September 2010). The 2nd Romanija Brigade, commanded by Mirko Trivić was ordered to resume fighting and continue its Žepa operation. Mirko Trivić, Ex. P01197, PT. 11795 (18 May 2007), PT. 11863, 11868 (21 May 2007). Also the 10th Sabotage Detachment arrived in Žepa on 20 or 21 July 1995 and took position on an elevation above Žepa. Dragan Todorović, T.17541–17543 (1 September 2011).

2695 There were no military targets in the centre of Žepa. Hamdija Torlak, T. 4377 (24 August 2010). *See* Hamdija Torlak, T. 4846 (2 September 2010).

2696 Hamdija Torlak, T. 4377 (24 August 2010).

2697 *See supra* paras. 124, 136.

2698 Ex. P00488. The Conference and Language Services Section of the Registry in a memorandum of 15 September 2011 stated that the English translation "chemical weapons" in the passage from Ex. P00488 cited above is correct and that an alternative translation of the BCS words "hemijskih sredstava" could be "chemical agents". *See also* Ljubomir Obradović, T. 12089 (31 March 2011); Milomir Savčić, T. 15894–15895 (22 June 2011); Milomir Savčić, Ex. P02418, PT. 15371–15372 (13 September 2007). The Accused showed some interest on 21 July 1995 in a "radical" demilitarisation plan that had been drafted by Ed Joseph and David Harland, two UNPROFOR Civil Affairs Officers. Ex. P01953, p. 3; Edward Joseph, Ex. P01949, PT. 14268 (24 August 2007); Edward Joseph, T. 10699, 10705, 10735 (2 March 2011); Louis Fortin, Ex. P00586 (confidential), PT. 18319 (private session) (27 November 2007); Ex. P00585, p. 146. Harland doubted from the beginning how sincere the Serbs might be about such an option. Ex. P02108, p. 12.

627. Later on 21 July 1995, an order was issued by the VRS Main Staff Logistics Sector for three types of weapons to be eventually delivered to Krstić at the Drina Corps IKM.[2699] These types were (1) chemical rifle grenade SKD M-83, (2) chemical rifle grenade SKE M-83, and (3) special hand grenades M79 AG-1.[2700]

628. Then, on the morning of 24 July 1995, the VRS's attacks paid off and resulted in the fall of the key defence elevation Brezova Ravan allowing the VRS to establish new lines halting only approximately 500 to 600 metres from the centre of Žepa as the crow flies.[2701] As a result, the atmosphere in Žepa was tense and people were scared and on the brink of panic.[2702]

8. Meeting between the VRS and the Bosnian Muslims at Bokšanica (24 July)

629. After the VRS set up its new lines on 24 July, hostilities in Žepa had ceased and another "invitation" to meet at Bokšanica was delivered to the War Presidency through UNPROFOR from Mladić.[2703] This time, Torlak left alone for Bokšanica in an UNPROFOR vehicle in the late afternoon.[2704] At Bokšanica, he was met by Mladić, the Accused, Kušić and Dudnjik.[2705] Mladić was very angry and immediately handed Torlak an "agreement" on the disarmament of the army and evacuation of the civilian population ("24 July 1995 Agreement") to sign.[2706] Even if Torlak was not authorised to cover the military or deal with any military issues he felt that he had no choice but to sign the document in order to comply with the War Presidency's objective which was the evacuation of the civilian population.[2707] Acting in fear and under duress, Torlak considered that the title "Agreement" was a euphemism since the Bosnian Muslims had in fact capitulated and were in no position to lay down any conditions from their side.[2708] In fact, Torlak testified that he would have signed anything as long as it ensured that the evacuation would commence.[2709] During the

2699 Ex. P02155; Ljubomir Obradović, T. 12073 (30 March 2011).
2700 Ex. P02155, p. 1; Ljubomir Obradović, T. 12092–12099 (31 March 2011) (testifying that weapons such as those listed in Ex. P02155 contained tear gas which is non-lethal and that they were used by police in riot control).
2701 Hamdija Torlak, T. 4373 (24 August 2010); Milomir Savčić, Ex. P02418, PT. 15280 (12 September 2007).
2702 Hamdija Torlak, T. 4373 (24 August 2010).
2703 Hamdija Torlak, T. 4373 (24 August 2010); Rupert Smith, T. 11717–11718, 11722–11723 (23 March 2011).
2704 Hamdija Torlak, T. 4374 (24 August 2010). Kulovac did not want to go to the meeting because he feared for his safety. Hamdija Torlak, T. 4374, 4378 (24 August 2010), T. 4473 (26 August 2010).
2705 Hamdija Torlak, T. 4373–4374 (24 August 2010). Ex. P02798, Disc 4, 00:35:49–00:36:39, p. 125.
2706 Hamdija Torlak, T. 4374–4375 (24 August 2010), T. 4382 (25 August 2010); Ex. D00051.
2707 Hamdija Torlak, T. 4375 (24 August 2010), T. 4382 (25 August 2010).
2708 Hamdija Torlak, T. 4378 (24 August 2010), T. 4396–4397 (25 August 2010) (testifying: "Let me not even mention that I was afraid. But, actually, I was not even afraid any longer. Fear was not – no longer part of my emotions."). *See also* Rupert Smith, Ex. P02086, PT. 17549–17550 (6 November 2007) (testifying that Torlak must have found himself "between a rock and a hard place" and that the easiest solution in these circumstances was for him to sign the document that was put in front of him); Esma Palić, T. 13308 (27 April 2011) (testifying that Hamdija Torlak came to Stitkov Dol one evening and, after a deep sigh, said that he has had to sign the surrender of Žepa).
2709 Hamdija Torlak, T. 4375, 4378 (24 August 2010), T. 4382 (25 August 2010); Ex. D00051, p. 2.

meeting, the return of the Bosnian Muslim population to Žepa, *i.e.*, the freedom of choice of place of living, was never discussed.[2710]

630. The 24 July 1995 Agreement was signed by Mladić, Kušić, Dudnjik, and Torlak at 6:30 p.m. that day and stipulated the following:

> 1. A cease-fire between the parties to the conflict shall be implemented immediately.
>
> 2. Avdo Palić shall issue an order to his troops to withdraw from the defence lines and refugee groups together with the population and from the centre of settlements/villages, and not try to cross illegally through the territory of Republika Srpska.
>
> 3. The civilians and able-bodied populations of Žepa shall assemble around the UNPROFOR base in Žepa, which will be a sign to the [VRS] that the units under the command of Avdo Palić have accepted the truce and will not try to take advantage of it.
>
> 5. [number as printed] Avdo Palić shall start disarming his units immediately and all the weapons shall be handed over to the VRS representative in the UNPROFOR base in Žepa.
>
> 6. Avdo Palić shall indicate all the mined areas and they shall be cleared in the presence of a joint commission and UNPROFOR.
>
> 7. In accordance with the Geneva Conventions of 12 August 1949 and the Additional Protocols of 1977, the civilian population of Žepa shall be given the freedom to choose their place of residence while hostilities continue.
>
> 8. The able-bodied population of Žepa shall be registered and accommodated in a holding centre which is to be under the control of the ICRC until the release of all captive VRS members and other Serbs who are in prisons in territory controlled by the army under the command of Rasim Delić.
>
> 9. The ICRC shall transport the able-bodied population of Žepa from the holding centres to territory under the control of Rasim Delić's army at the same time as all captive VRS members and other Serbs who are in prisons in territory controlled by the army under the command of Rasim Delić are released and transported to Republika Srpska.
>
> 10. UNPROFOR, the ICRC, the UNHCR, and other international humanitarian organisations, in cooperation with the [VRS], shall enable the transport of the civilian population from Žepa to territory under the control of Rasim Delić's army or to third countries of their choice in accordance with the Geneva Conventions of 12 August 1949.
>
> 11. This Agreement shall enter into force immediately upon signing.[2711]

631. In the view of UNPROFOR, the implementation of the 24 July 1995 Agreement depended on whether the ceasefire would hold, whether the ABiH fighters in Žepa would lay down their weapons and accept prisoner status, and whether the Bosnian Government would accept the conditions for the prisoner exchange.[2712] UNPROFOR did not consider the 24 July 1995 Agreement

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[2710] Hamdija Torlak, T. 4388–4389, 4396 (25 August 2010) (testifying that "look, we're talking warfare" during which territories were being taken over and therefore there was no reference to any return).

[2711] Ex. D00051, pp. 1–2 (signed version of the agreement). Torlak identified his signature on the BCS version on the bottom right corner. Hamdija Torlak, T. 4383 (25 August 2010). *See also* Ex. P00495, pp. 1–2 (unsigned version of the agreement).

[2712] Ex. P01979, p. 1; Hamdija Torlak, T. 4751 (1 September 2010) (testifying that from the point of view of the

to be effectively in force as the agreement could not be valid or be enforced unless all parties that would have a role in its enforcement agreed to it.[2713]

632. Following the signing, Mladić said that the Accused and Palić would organise the transportations in the centre of Žepa town.[2714] Mladić said to the Accused "Tošo, get ready, you are going to Žepa to organize transport. The buses are coming"; whereupon Mladić ordered the buses to come and the Accused left and organized the transportation of the Bosnian Muslims.[2715] Mladić insisted that, once the evacuation started, Torlak should be in Bokšanica as a guarantee for the Accused's safety while the Accused was organising the evacuation in Žepa.[2716]

633. Upon Torlak's return to Žepa, the War Presidency in Žepa as well as the political and military leadership in Sarajevo were informed about what had been signed.[2717] They agreed with the evacuation of the civilians but no clear signal was given regarding the solution for the able-bodied men.[2718]

B. Fate of the Bosnian Muslims of Žepa and Related Developments from 25 July 1995

1. Further Meetings on an All-for-All Prisoner Exchange (Sarajevo, 25–27 July)

634. Early in the morning of 25 July, the Accused, who was then in Rogatica,[2719] reported to the Main Staff, "to Gvero or Miletić personally", that the "Muslims in Žepa accepted the agreement and agreed to the status of prisoners of war until all our war prisoners are exchanged".[2720] He highlighted the risk that should UNPROFOR send a General to Žepa, there might be a "similar scenario" to the one of spring of 1993 involving General Morillon in Srebrenica.[2721] In addition, in advising on negotiations on the exchange of prisoners he warned that the "issue of prisoners from

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Bosnian government, he had no *de jure* competence or authority, however, *de facto*, the situation was different); Edward Joseph, T. 10575–10576 (28 February 2011). *See also* Ex. P00585, p. 149 (noting that the Bosnian Government considered the civilian negotiating with the Serbs to be a nobody and that it was speaking with the Serbs through UNPROFOR); Hamdija Torlak, T. 4763 (1 September 2010) (testifying that the agreement is written in such a way that suggests that Palić should have signed it because he was the main commander of the Bosnian Muslim Forces in Žepa).

2713 Louis Fortin, T. 3146 (24 June 2010) (testifying that the Bosnian Government did not agree to it and UNPROFOR could not implement the guarantees that the 24 July 1995 Agreement ascribes to it). *See also* Ex. P01979, p. 1; Rupert Smith, T. 11689–11692 (23 March 2011) (confirming that Torlak was undoubtedly in communication with Avdo Palić throughout this time, but maintains that these two men were in separate arrangements of command, with Torlak representing the interests of the civil community including the women and children, and Palić representing the men of military age).

2714 Hamdija Torlak, T. 4386–4388 (25 August 2010).

2715 Ex. P02807, p. 3. *See also* Ex. P00359a; Ex. P00359b (confidential), pp. 1–2.

2716 Hamdija Torlak, T. 4387–4388 (25 August 2010). The reason for Mladić's request was that the centre of Žepa at that time was not under VRS control. Hamdija Torlak, T. 4388 (25 August 2010).

2717 Hamdija Torlak, T. 4375 (24 August 2010), T. 4490–4491 (26 August 2010), T. 4762 (1 September 2010).

2718 Hamdija Torlak, T. 4375–4376 (24 August 2010), T. 4762 (1 September 2010).

2719 *See supra* paras. 124, 136.

2720 Ex. P00494, p. 1.

2721 Ex. P00494, p. 2. *See supra* para. 175.

Srebrenica" had already been brought up by the Bosnian Muslims and could be used by them in their advantage.[2722]

635. Following the failure of earlier meetings at the Sarajevo Airport concerning the issue of an all-for-all prisoner exchange,[2723] the Bosnian Serb side initiated further meetings to continue discussions on the issue, the first one of which was to take place on 25 July.[2724] When UNPROFOR was informed by Mašović about the upcoming meeting, Harland called Hasan Muratović, the Minister of the BiH government with particular responsibility for dealing with the UN, to ask him whether the Bosnian government would accept the 24 July 1995 Agreement.[2725] Muratović told him that the BiH government was not aware of any agreement and would only accept an evacuation performed by UNPROFOR in order to avoid a repetition of what had happened in Srebrenica.[2726] At the meeting of 25 July, a tentative agreement on the evacuation of the population and the exchange of POWs was reached,[2727] providing the following:

> 1. UNPROFOR shall be requested to provide security for the evacuation of the entire population in Žepa, including the soldiers; and
>
> 2. UNPROFOR shall be requested to facilitate an exchange of all POWs held by both sides (between 500 and 1,000 people).[2728]

The issue of the missing men taken prisoner in Srebrenica came up again during this meeting; however, the VRS still refused to produce a list of these prisoners, despite the continuing request from the Bosnian Muslim side for them to do so.[2729]

636. The Accused was personally informed on the same day by Lieutenant Colonel Jovica Karanović, an Intelligence Officer in the VRS Main Staff,[2730] that the BiH government would accept the proposed agreement from the Sarajevo Airport meeting of 25 July "in its entirety under the condition that both civilians and able-bodied men are evacuated from the enclave of Žepa" and that the BiH government was willing to secure an all-for-all prisoners exchange.[2731]

2722 Ex. P00494, p. 1.
2723 *See supra* paras. 623–624.
2724 Ex. P02108, pp. 37, 41.
2725 Ex. P02108, p. 38; Rupert Smith, Ex. P02086, PT. 17469 (5 November 2007).
2726 Ex. P02108, pp. 37–38.
2727 Ex. P02108, pp. 37–38, 41.
2728 Ex. P02108, p. 41. A formal written agreement was expected as of the 26 July 1995. However, the negotiations at Sarajevo Airport on the POW exchange resumed without any notable progress that following day. Ex. P02108, pp. 41, 56. *See also* Hamdija Torlak, T. 4491–4493 (26 August 2010); Rupert Smith, Ex. P02086, PT. 17552 (6 November 2007) (testifying that the issue was also further discussed with Mladić in the evening of 26 July).
2729 Ex. P02108, p. 41.
2730 Richard Butler, T. 16530 (12 July 2011).
2731 Ex. P00493, p. 1.

637. In a further meeting that began shortly before midnight on 25 July and which took place in the Presidency, Izetbegović informed Smith that the BiH government agreed to exchange 500 POWs held by the ABiH for the 2,000 men in Žepa, but expressed concerns about whether Mladić would adhere to his side of the agreement.[2732] Smith promised to pass on to Mladić or someone with the appropriate authority the offer of the BiH government to discuss the POW issue during another meeting at the Sarajevo Airport.[2733]

638. On 27 July 1995, after Palić had urged the Bosnian government for the last time to agree to the intended POW exchange, negotiations resumed at the Sarajevo Airport.[2734] Both sides, however, were still maintaining their previous positions and, while the VRS insisted that the "men from Žepa" should surrender and then be released according to an all-for-all exchange, the Bosnian representative demanded that the men be evacuated without falling into the hands of the Bosnian Serbs.[2735]

2. Transportation of Bosnian Muslim Civilians from Žepa (25–27 July)

639. In the period leading up to the fall of the Žepa enclave, the population of Žepa, including the able-bodied men and some wounded, had fled to the surrounding mountains.[2736] When the news spread about the 24 July 1995 Agreement, Bosnian Muslim civilians started returning to the centre of Žepa in order to be evacuated.[2737] That same day, Izetbegović addressed the UN Security Council and demanded that it orders the safe evacuation of the women, children, sick and wounded from Žepa under the protection of UNPROFOR.[2738]

2732 Ex. P01979, pp. 3–4; Emma Sayer, T. 10974, 10993 (8 March 2011), T. 11059–11060 (9 March 2011).

2733 Ex. P01979, p. 4.

2734 Ex. P01956, p. 1; Ex. P01980, p. 1; Ex. D00171. Palić stressed that more than half of the men hiding in the hills were without weapons and that they stood no chance of making a breakthrough. Ex. D00171. *See also* Ex. D00055, p. 30.

2735 Ex. P01956, p. 1; Ex. P01980, p. 1. The Accused was aware that negotiations at the airport were proceeding. Edward Joseph, T. 10559–10560 (28 February 2011). The Accused told Joseph that the Bosnian Serbian side would accept an arrangement under which the ABiH soldiers in the hills would be transported by UNPROFOR to ABiH held territory as part of the all-for-all exchange deal being negotiated at Sarajevo Airport. Ex. P02108, p. 62.

2736 Meho Džebo, T. 14801 (30 May 2011); Nesib Salić, T. 13237–13238, 13240–13241, 13248 (26 April 2011); Ex. P02189, marking 2; PW-006, Ex. P02797, PT. 7014 (7 February 2007); Esma Palić, T. 13310 (27 April 2011); Ex. D00110 (letter from Izetbegović to the UN Security Council stating that "[a]s a result of the relentless shelling, the population has abandoned the town and is hiding in the nearby forests").

2737 Esma Palić, T. 13310 (27 April 2011); Nesib Salić, T. 13238 (26 April 2011); Thomas Dibb, Ex. P00741, PT. 16284–16285 (15 October 2007). Most of the able-bodied men, including members of the ABiH, remained in the mountains at this time. *See* Ex. P02108, p. 45 (a report from Harland stating that on 25 July, Bosnian men of military age were still in the hills and "awaiting assurances that they would be able to escape"); Edward Joseph, Ex. P01949, PT. 14202 (23 August 2007); Hamdija Torlak, T. 4422 (25 August 2010), T. 4809 (2 September 2010). There were no ABiH members present in Žepa at that time. Meho Džebo, T. 14803 (30 May 2011).

2738 Ex. D00110. *See also* Ex. D00055, p. 27.

640. The VRS arranged buses and trucks to carry out the transportation.[2739] According to an intercepted conversation of 25 July, the Accused "and others" had ordered "at least 1,000 litres of diesel and 300, 400 litres of petrol for tanking for undisturbed work".[2740] Although no agreement had been reached on the fate of the able-bodied men in Žepa, the transportation of the Bosnian Muslim civilians from Žepa started on the same day that the Accused had ordered fuel, namely on 25 July 1995,[2741] and lasted until 27 July 1995.[2742]

641. In accordance with Mladić's order,[2743] the Accused was on the ground in Žepa on all three days of the evacuation; he was, next to Mladić, the most senior VRS officer present during the transportation process.[2744] In Smith's view, the Accused "clearly played an important role in Žepa and appeared to be in charge of the [...] movement of the civilians out of the pocket".[2745] In the morning of 25 July, the Accused arrived at the UNPROFOR base in the centre of Žepa, escorted by officers or privates.[2746] He immediately met with Palić and was seen with him in the centre of Žepa on several occasions during the evacuation.[2747] Apart from his presence in Žepa, the Accused was also located in and around the Rogatica Brigade's area of responsibility, including occasionally at the Borike IKM.[2748]

642. Major Dragomir Pećanac, who worked for the VRS Main Staff Intelligence Administration in July 1995,[2749] was also present in Žepa on these days.[2750] Pećanac's function in Žepa was, on the one hand, to serve as a security guard for Mladić, and on the other hand, to support the implementation of the transportation by personally accompanying Bosnian Muslims to the buses.[2751] UNPROFOR, two ICRC teams, and one Joint Commission Observer ("JCO") team

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2739 Đoko Razdoljac, T. 8285-8286 (30 November 2010); Ex. P01435, pp. 1-2; Thomas Dibb, Ex. P00741, PT. 16286 (15 October 2007); Hamdija Torlak, T. 4411 (25 August 2010); Ex. D00055, p. 28.

2740 Ex. P00568a; Ex. P00568b (confidential) (indicating the date of 25 July 1995).

2741 Hamdija Torlak, T. 4391–4392 (25 August 2010), T. 4766 (1 September 2010); Esma Palić, T. 13312 (27 April 2011); Rupert Smith, Ex. P02086, PT. 17552 (6 November 2007); Ex. 02798, 00:36:39–00:38:17.

2742 Hamdija Torlak, T. 4402, 4413 (25 August 2010).

2743 *See supra* para. 632.

2744 Rupert Smith, Ex. P02086, PT. 17553 (6 November 2007), PT. 17730 (8 November 2007); Rupert Smith, T. 11585–11587 (21 March 2011), T. 11730 (23 March 2011); Ex. D00193, p. 6; Edward Joseph, Ex. P01949, PT. 14200 (23 August 2007); Meho Džebo, T. 14801 (30 May 2011); Hamdija Torlak, T. 4391 (25 August 2010), T. 4766 (1 September 2010); Ex. D00175, p. 2. *See also* Ex. P02798, Disc 4, 00:38:11–00:38:17 (video-footage depicting the Accused in Žepa on 25 July). Pećanac testified that Mladić had tasked the Accused with organizing the "Turks" in order to ensure the transportation of the Muslims in Žepa. Dragomir Pećanac, T. 18188 (17 January 2012). *See also* Ex. P00359a. The Accused's authority on the ground is further demonstrated by the fact that he gave permission for the transport of wounded from Žepa to Sarajevo on this first day. Thomas Dibb, Ex. P00741, PT. 16283 (15 October 2007); *see also* Ex. P00367a; Ex. P00577a, p. 3. *See also infra* para. 652.

2745 Rupert Smith, Ex. D00193 (14 August 1996), p. 19.

2746 Hamdija Torlak, T. 4376 (24 August 2010), T. 4391 (25 August 2010).

2747 Hamdija Torlak, T. 4392 (25 August 2010); Ex. P02798, Disc 4, 00:38:11–00:38:17 (video-footage showing the Accused shaking hands with Palić); Hamdija Torlak, T. 4420–4421 (25 August 2010).

2748 Ex. P00494; Ex. P00484, P00476; Ex. P00477. *See infra* paras. 979–989.

2749 *See supra* para. 115.

2750 Meho Džebo, T. 14801 (30 May 2011).

2751 Meho Džebo, T. 14807 (30 May 2011); Dragomir Pećanac, T. 18189 (private session) (17 January 2012).

arrived in town on 25 July to provide their assistance with the boarding process.[2752] Bosnian Muslim military and civilian components represented by Palić and Torlak respectively were also present in Žepa on these days to assist the process.[2753]

643. When the transportation started civilians were cautious about leaving until it was known that convoys were regularly reaching their destination—Kladanj[2754]—safely.[2755] The UNPROFOR major of the Joint Commission Observers, David Wood,[2756] testified that he saw no physical violence directed towards the inhabitants of Žepa throughout the transportation process, but noted that there was an atmosphere of fear and intimidation in the enclave.[2757] The Bosnian Muslims were afraid and tired,[2758] many of them having lost track of family members who had fled to the mountains or the forests in the days preceding the start of the transportation.[2759] The Accused, who appeared to be directing the VRS as they boarded Bosnian Muslim civilians onto the buses,[2760] was observed waving his pistol up at the sky,[2761] knowing "very well what he was doing".[2762] In addition, the VRS was using megaphones from a surrounding hill to broadcast messages to the

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2752 Ex. P02108, p. 46 (report by Harland to UNPROFOR command concerning deployment of 150 additional UNPROFOR troops being deployed to the enclave to reinforce the 79 Ukrainians there, and that in addition, UNPROFOR Civil Affairs, a JCO team, and two ICRC teams were present). *See also* Ex. D00055, p. 29. *See also* Louis Fortin, Ex. P00587, T. 18277 (27 November 2007); Rupert Smith, Ex. P02086, PT. 17628-17629 (7 November 2007); Rupert Smith, T. 11590 (21 March 2011); Hamdija Torlak, T. 4391–4392 (25 August 2010); Thomas Dibb, Ex. P00741, PT. 16275–16276 (15 October 2007); Meho Džebo, T. 14806–14807 (30 May 2011). UNHCR did not participate in the "evacuation" as they did not want to be seen to be assisting "ethnic cleansing", a concern shared by the ICRC. *See* Edward Joseph, Ex. P01949, T. 14175–14176 (23 August 2007). Thomas Dibb, an UNPROFOR officer working with Smith, testified that while the ICRC was present in Žepa on the first day of transportation, they did not take an active part and did not register the people. According to Dibb, the ICRC was not present on 26 July and the subsequent days of the transportation. Thomas Dibb, T. 4932 (6 September 2010); Thomas Dibb, Ex. P00741, PT. 16266 (15 October 2007). *See supra* Chapter IV. 2. (a). The JCOs were members of British Special Forces deployed across BiH in a liaison role. Thomas Dibb, Ex. P00741, PT. 16273 (15 October 2007).

2753 Ex. P02798, Disc 4, 00:37:34-00:37:36 (showing Avdo Palić in the centre of Žepa on 25 July); Hamdija Torlak, T. 4391–4392 (25 August 2010), T. 4766 (1 September 2010) (testifying about the "evacuation" process on 25 July). *See also* Rupert Smith, T. 11590–11591 (21 March 2011); Hamdija Torlak, T. 4418–4421 (25 August 2010); Thomas Dibb, Ex. P00741, PT. 16281 (15 October 2007); Thomas Dibb, T. 4906 (6 September 2010).

2754 Hamdija Torlak, T. 4412 (25 August 2010). *See infra,* para. 645 (concerning route taken by the buses and ultimate destination).

2755 Hamdija Torlak, T. 4392 (25 August 2010), T. 4704–4705 (31 August 2010).

2756 David Wood, T. 11086 (10 March 2011).

2757 David Wood, T. 11104 (10 March 2011).

2758 Hamdija Torlak, T. 4704–4705 (31 August 2010); Meho Džebo, T. 14804 (30 May 2011); Thomas Dibb, Ex. P00741, PT. 16285 (15 October 2007) (describing the civilians he observed in Žepa as "drained").

2759 Esma Palić, T. 13311–13312 (27 April 2011).

2760 Wood testified that the Accused was actively directing the movement of the Bosnian Muslim civilians onto the buses by what appeared to Wood to be seven to nine armed Serb policemen. After further questioning on this matter, Wood conceded that he is not in a position to state for sure whether the forces the Accused was directing were policemen or VRS soldiers. David Wood, T. 11104–11105, 11146–11147, 11168–11170 (10 March 2011).

2761 David Wood, T. 11104 (10 March 2011). Wood testified that being a soldier himself, if he was supervising the boarding of women and children onto buses, he would have no need to have his gun out at all. David Wood, T. 11107–11108 (10 March 2011). He testified, moreover, that the only reason why the Accused would have his pistol out would be with the purpose of frightening the population. David Wood, T. 11127–11128 (10 March 2011).

2762 David Wood, T. 11115 (10 March 2011).

Bosnian Muslims.[2763] In one instance, Esma Palić recalls them calling out "People of Žepa, this is Ratko Mladić talking to you. [...] You cannot stay in Žepa. Take white flags and start walking toward Brezova Ravan, where there are buses waiting for you."[2764] Moreover, information about the events following the fall of the Srebrenica enclave was beginning to circulate amongst some of the civilians,[2765] although people did not yet know the enormity of what had taken place.[2766]

644. Several people including Imamović, Hajrić, Joseph, Thomas Dibb[2767], and others made an effort to compile lists of the names of the people who were leaving on buses that day so that they could ensure that all those who had left Žepa on buses arrived at their destination.[2768] Nevertheless, passengers in at least one convoy on 25 July left Žepa without having their names recorded.[2769] Moreover, while UNPROFOR intended for all of the buses leaving Žepa to be boarded by at least one UNPROFOR soldier to serve as an escort,[2770] there were some instances where vehicles filled with Bosnian Muslim civilians had no UNPROFOR soldier onboard.[2771]

645. From the enclave, the buses drove through Bokšanica and made their way through Borike, Rogatica, Podromanija, Han Pijesak, Vlasenica, in the direction of Kladanj where the Bosnian Muslim civilians disembarked and walked the remainder of the distance of several kilometres to reach ABiH held territory.[2772] By the end of 25 July, an estimated 1,200–1,400 Bosnian Muslim civilians had been transported out of Žepa.[2773]

2763 Esma Palić, T. 13291 (26 April 2011).

2764 Esma Palić, T. 13291 (26 April 2011) (further testifying that this upset the population and resulted in a frenzy).

2765 Meho Džebo, T. 14804 (30 May 2011); Thomas Dibb, Ex. P00741, PT. 16286 (15 October 2007).

2766 Meho Džebo, T. 14804 (30 May 2011).

2767 Thomas Dibb was assigned as interpreter and liaison officer to the VRS for Smith in early April 1995. Thomas Dibb, T. 4872 (2 September 2010); Thomas Dibb, Ex. P00741, PT. 16266 (15 October 2007).

2768 Hamdija Torlak, T. 4392, 4412 (25 August 2010), T. 4474 (26 August 2010), T. 4705–4706 (31 August 2010); Thomas Dibb, Ex. P00741, PT. 16287–16288, 16291 (15 October 2007); Thomas Dibb, T. 4913, 4938 (6 September 2010); Edward Joseph, Ex. P01949, PT. 14184, 14186 (23 August 2007) (testifying that together with Viktor Bezruchenko, he took down the names of people with the purpose of establishing whether they were leaving on their own volition or not); Ex. P02798, Disc 4, 00:37:39–00:38:07 (video-footage depicting Hajrić holding a piece of paper and standing next to a group of civilians boarding a bus); Ex. D00175, p. 1 (stating that UNPROFOR Political and Humanitarian Affairs Officers tried to register the departing civilians to the extent possible).

2769 Esma Palić, T. 13367 (27 April 2011).

2770 Louis Fortin, Ex. P00587, PT. 18277 (27 November 2007); Louis Fortin, T. 3244 (29 June 2010). Fortin noticed at one point during the day that a vehicle passing through the checkpoint at Rogatica was missing an UNPROFOR soldier. Fortin blocked the path of the truck and demanded that a UN soldier be put on board. Although the VRS initially protested and threatened Fortin, they eventually permitted a UKRCoy soldier to board the vehicle. Fortin knew that thousands of Bosnian males had disappeared following the fall of Srebrenica and his objective was to ensure that no one was pulled off the vehicles. Louis Fortin, Ex. P00587, PT. 18278 (27 November 2007).

2771 Louis Fortin, Ex. P00587, PT. 18278 (27 November 2007). This was further agreed during a meeting between Smith and Mladić on 25 July 1995. Ex. P01979, p. 3. Mladić further granted permission for a CNN team to enter Žepa to see how the situation was being handled. *See also* Rupert Smith, T. 11731 (23 March 2011); Rupert Smith, Ex. P02086, PT. 17552 (6 November 2007).

2772 Hamdija Torlak, T. 4412 (25 August 2010); Ramiz Dumanjić, T. 17941 (29 September 2011); Esma Palić, T. 13318–13319 (27 April 2011); PW-013, T. 9881, 9894–9895 (15 February 2011).

2773 Ex. D00175, p. 2; Ex. P02108, p. 45 (referring to a total of 21 buses). *See also* Hamdija Torlak, T. 4392, 4414–

646. On the evening of 25 July, Esma Palić boarded a bus on the last convoy leaving Žepa that day.[2774] Together with the Accused, her husband Avdo Palić escorted this convoy in the Accused's vehicle.[2775] Having arrived in Kladanj, Palić said farewell to his wife and returned to Žepa together with the Accused.[2776] This was the last time Esma Palić saw her husband,[2777] although two days later, on 27 July, she received a message from him over a radio-network in which he told her he had made it back to Žepa safely.[2778] On Palić's way back to Žepa on the same evening, he met briefly with Mladić at Bokšanica.[2779] It was at this time that Mladić, as he had already demanded earlier,[2780] repeated his request that Torlak go to Bokšanica and stay there in order to act as "a kind of guarantee" for the Accused while he was coordinating the "evacuation of the Bosnian Muslim civilians" in the centre of Žepa.[2781] In the morning of the following day, on 26 July, Palić told Torlak about this meeting with Mladić on the previous evening, and conveyed Mladić's demand for Torlak to go to Bokšanica to guarantee the Accused's security while the Accused was in Žepa.[2782] This conversation was the last time when Torlak saw Palić.[2783] Torlak then indeed left with one of the convoys to Bokšanica,[2784] where he spent most of the time with Mladić.[2785] Torlak spent the night of 26 July in accommodation used by UNPROFOR soldiers as their sleeping quarters.[2786]

647. The transportation of the Bosnian Muslim civilians from Žepa to Kladanj resumed on 26 July 1995.[2787] The Accused and Pećanac were again present in Žepa.[2788] That morning many

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4415 (25 August 2010). Torlak testified that a relatively small number of Žepa inhabitants were transported on this first day because people were cautious. Hamdija Torlak, T. 4704–4705 (31 August 2010). Torlak explained further that in addition to buses, there were also a number of open-topped trucks onto which Bosnian Muslims would be boarded in Žepa town. These trucks traveled to Bokšanica, where the civilians were transferred to buses waiting there, which had not been able to enter the enclave because they couldn't navigate the roads. Hamdija Torlak, T. 4412–4413 (25 August 2011).

2774 Esma Palić, T. 13312, 13364 (27 April 2011). Although Esma Palić testified that she left on 24 July, the evidence demonstrates that the transportation of the Bosnian Muslim civilians from Žepa did not begin until 25 July 1995. *See supra* para. 640.

2775 Esma Palić, T. 13312–13313, 13316 (27 April 2011); Hamdija Torlak, T. 4402–4403, 4415–4416 (25 August 2010), T. 4803 (2 September 2010). Palić entered the bus on which his wife was travelling in Rogatica and remained on it until Kladanj. Esma Palić, T. 13316–13317 (27 April 2011). *See also* Hamdija Torlak, T. 4415–4416 (25 August 2010), T. 4803 (2 September 2010).

2776 Esma Palić, T. 13321–13322 (27 April 2011). Questioned by the bench as to why Avdo Palić did not go with his wife to ABiH held territory and instead returned to Žepa, she explained that it was a question of honour and that Avdo Palić could not leave behind the people with whom he had defended Žepa so many times before. Esma Palić, T. 13321 (27 April 2011).

2777 Esma Palić, T. 13318 (27 April 2011).

2778 Esma Palić, T. 13322 (27 April 2011).

2779 Hamdija Torlak, T. 4402–4403, 4407 (25 August 2010).

2780 *See supra* para. 632.

2781 Hamdija Torlak, T. 4402–4403, 4407, 4423 (25 August 2010), T. 4803 (2 September 2010).

2782 Hamdija Torlak, T. 4402–4403, 4407, 4423 (25 August 2010), T. 4803 (2 September 2010).

2783 Hamdija Torlak, T. 4402–4403 (25 August 2010), T. 4803 (2 September 2010).

2784 Hamdija Torlak, T. 4403, 4406 (25 August 2010).

2785 Hamdija Torlak, T. 4423–4424 (25 August 2010) (testifying that although he "formally" was at UNPROFOR, he spent the time with the "top leaders" of the VRS).

2786 Hamdija Torlak, T. 4423 (25 August 2010), T. 4465–4466 (26 August 2010).

2787 Ex. D00175, p. 1.

2788 *See supra* paras. 641–642. *See also* Hamdija Torlak, T. 4421 (25 August 2010) (testifying that he believes that he saw the Accused in the centre of Žepa on 26 July 1995).

more people had gathered in the town centre than the previous day, eager to leave the enclave.[2789] By then, the people were more aware of what had transpired in Srebrenica and were in an agitated state.[2790] Joseph was "convinced that [the women he spoke to] were absolutely terrorised and petrified and their concern was if they remained in that town, their survival was something subject to serious question."[2791] One woman told him that she did not want to leave, but could not stay because no one would protect her if she did; she then started crying which in turn caused all the other women to cry.[2792] Joseph further stated that while the Bosnian Muslim civilians were not "physically" forced to board a vehicle, "the issue of volition was already well passed and [...] these people felt themselves under duress. This was their reason for their departure".[2793] He added:

> And so this report [referring to Ex. D00175, p. 1] stating that they were not forced to leave might have a narrow meaning in that there wasn't a person with a bayonet at their back doing it, but it was the overall presence of Serb forces and the fact that they no longer had any, any defence and were in the control of Serb forces which put them in extreme apprehension and fear[2794]

Dibb also highlighted the overall presence of VRS forces and testified that the war in Bosnia was a particularly brutal war and that the civilian was not afraid of the actual fighting itself, but rather of what would happen once the fighting would stop.[2795] The fact that Žepa town was surrounded and then captured by VRS forces, and the emerging stories of what had happened in Srebrenica, were, according to Dibb, the reasons why all civilians from Žepa wanted to leave the enclave.[2796] He testified that

> [I]t's hard to say that the people had free choice whether to stay or to go. I believe they didn't have a choice. They — they were going to leave for what they believed was their own safety.[2797]

Similarly, questioned by the Prosecution if he and his family felt free to choose whether to stay in Žepa or not, Džebo testified that no one even thought of staying because people did not feel safe and were distrustful.[2798] Finally Esma Palić testified that

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2789 Hamdija Torlak, T. 4607 (30 August 2010) (testifying that by that time the civilian population wished to leave the enclave because they were under siege), T. 4705 (31 August 2010) (testifying that on 26 July, the majority of the civilian population of Žepa came to the centre, after they had received feedback that the convoys from the previous day had reached their destination safely).

2790 Edward Joseph, Ex. P01949, PT. 14185 (23 August 2007).

2791 Edward Joseph, Ex. P01949, PT. 14184 (23 August 2007).

2792 Edward Joseph, Ex. P01949, PT. 14184 (23 August 2007); Edward Joseph, T. 10634–10637 (1 March 2011).

2793 Edward Joseph, Ex. P01949, PT. 14290 (24 August 2007). The Miletić Defence eventually made the proposition that the VRS "showed the willingness to eventually allow people to remain in Žepa" in the agreement reached on 24 July 1995. Joseph sated that he could not exclude that possibility.

2794 Edward Joseph, T. 10635 (1 March 2011).

2795 Thomas Dibb, Ex. P00741. PT. 16311 (15 October 2007); Thomas Dibb, T. 4934–4935 (6 September 2010).

2796 Thomas Dibb, T. 4935 (6 September 2010). *See also* Rupert Smith, T. 11670 (22 March 2011), T. 11730–11731 (23 March 2011) (testifying that the wish to leave the enclave resulted only from the collapse of the defence of the enclave and the presence of armed Bosnian Serb army amongst them. According to Smith the "evacuation" of the population out of the enclave was a consequence of the VRS's attack and the experience of the events in Srebrenica); Esma Palić, T. 13320 (27 April 2011) (testifying that if the civilians would have stayed, they surely would be killed as the VRS wanted to see an "ethnically pure Serb area".)

2797 Thomas Dibb, T. 4935 (6 September 2010).

> No. It wasn't the choice of anyone. It was Ratko Mladić's decision and the decision of his associates, the apparatus he surrounded himself with, including Mr. Tolimir, who is present here. They decided about what would happen with us. They decided we had to leave and in what way. All that story of free choice is absurd viewed in those circumstances. Basically, throughout the war we had no choice. I can tell you two things about it since you ask. If someone asked me to stay in Žepa, promising that my husband would be safe, I would stay there for my entire life, although I had not lived there before. I can also tell you that people lived in Žepa for generations, and such families never dreamt of leaving. They were the true indigenous population of Žepa who never pondered leaving their property. However, they had to leave. They never managed to adapt to the new social circumstances, but they had to leave.[2799]

648. Video footage from 26 July, demonstrates the presence of Mladić, Gvero, Kušić, Krstić and Captain Zoran Čarkić, the Chief of the Department for Intelligence and Security Affairs of the Rogatica Brigade at OP2 in Bokšanica.[2800] The footage also records Mladić entering many of the buses of Bosnian Muslim civilians on their way out of Žepa, at Bokšanica, introducing himself and telling people that they would be transported safely to Kladanj; in several of the buses, he told the Bosnian Muslim civilians that he is giving them their life as a gift.[2801] In one of the buses, Mladić told the Bosnian Muslim civilians that "[y]ou could have all lived here and no one would touch you if your people didn't touch our lives and come inside our villages".[2802] On yet another bus, after asking whether there were any able-bodied men on it, he said "[y]ou just proceed and join your people, but rest assured that we are going to find you there as well".[2803] Later, during a stop of the entire convoy at Han Pijesak, the same bus was boarded by a young man, who slapped one of the passengers and declared that "all these people should be killed".[2804]

649. Close to 4,000 Bosnian Muslim civilians had been transported out of Žepa by the end of 26 July.[2805] Whereas the Accused wanted the transportations to continue and more vehicles to be provided, Dibb persuaded the Accused to resume the "evacuation" on the following day.[2806] Around 400 frightened Bosnian Muslim civilians were left in the enclave by the end of the day, waiting to

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2798 Meho Džebo, T. 14805 (30 May 2011).

2799 Esma Palić, T. 13319 (27 April 2011).

2800 Ex. P02798, Disc 4, 00:38:46, at 00:39:53 (Gvero); at 00:40:51 (Krstić), at 00:43:44 (Kušić), at 00:46:29–00:46:34 (Čarkić in the far right, and Mladić, third to the left of Čarkić); Hamdija Torlak, T. 4435–4436, 4440 (25 August 2010).

2801 *See* Ex. P02798, Disc 4, 00:46:44–00:58:30. *E.g.,* "I forgive you all and am giving you your life as a present...next time there won't be any forgiveness." (Ex. P02798, Disc 4, 00:54:33-00:54:41, pp. 136–137). *See also* Zoran Čarkić, T. 12747–12748 (13 April 2011); Hamdija Torlak, T. 4424 (25 August 2010).

2802 Ex. P02798, Disc 4, 00:55:06–00:55:19, p. 137.

2803 Ramiz Dumanjić, T. 17939, 17943 (29 September 2011).

2804 Ramiz Dumanjić, T. 17941 (29 September 2011). Bosnian Serb police later arrived and chased the man away, allowing the bus to proceed. *Ibid.*

2805 Thomas Dibb, Ex. P00741, PT. 16288–16289 (15 October 2007); Ex. D00175, p. 2 (On 26 July, the UN estimated that those who had left, those awaiting departure, and those who were hiding in the hills totaled approximately 4,300 to 5,100 persons).

2806 Thomas Dibb, Ex. D00112 (28 December 1996), p. 4.

be transported.[2807] They were transported out of Žepa the following day on 27 July, still in the presence of the Accused.[2808]

3. Transportation of the Sick and Wounded Bosnian Muslim Men of Žepa (25–27 July)

650. Parallel to the "evacuation" of the civilian population of Žepa, the transportation of the sick and wounded Bosnian Muslim men of Žepa was organised and carried out. On 25 July, at the request of UNPROFOR, Smith, Wood, Mladić, and Gvero convened at the Jela Restaurant at Han-Kram to discuss the situation in Žepa.[2809] Following this meeting, Mladić and Smith continued to assess the situation and discussed the beginning of the evacuation of the wounded during a follow-up meeting in the afternoon at Bokšanica.[2810] Smith and Mladić agreed that the evacuation of the wounded—the "MEDEVAC cases"—should start immediately with Bosnian Serb vehicles.[2811] The Accused was also present at OP2 in Bokšanica at that time, but returned to the centre of Žepa in the same afternoon.[2812]

651. In the evening of 25 July, Smith, Mladić, and Torlak met to discuss the details of the "evacuation".[2813] The departure of military-aged men from Žepa and the interlinked issue of the intended POW exchange were also discussed and Torlak said that departure of military-aged men would be the biggest problem in the implementation of the 24 July 1995 Agreement.[2814] Torlak and

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2807 Thomas Dibb, Ex. P00741, PT. 16288–16289 (15 October 2007) (further testifying that he let them sleep in the garden of the mosque and surrounded them with French troops on guard).

2808 Thomas Dibb, Ex. P00741, PT. 16288, 16290–16291 (15 October 2007). *See also* Hamdija Torlak, T. 4402, 4413 (25 August 2010) (stating that the transportation was completed by 27 July 1995). *See supra* para. 641.

2809 Emma Sayer, Ex. P01974, PT. 21081–21082 (6 February 2008); Emma Sayer, T. 10963, 10972 (8 March 2011); Ex. P01978, p. 1; David Wood, T. 11099 (10 March 2011); Ex. P01979, p. 2. *See also* Rupert Smith, Ex. P02086, PT. 17544 (6 November 2007); Ex. D00193, p. 18; Ex. D00055, p. 27; Ex. P01978, p. 1; Emma Sayer, Ex. P01974, PT. 21081 (6 February 2008). Smith questioned the authority of the signatories to the 24 July 1995 Agreement and whether the signatories had control over the ABiH members in Žepa. Mladić made clear that he did not intend to deal with the Bosnian government and that he was confident that the signatories would do their utmost to move the population. Ex. P01979, p. 2.

2810 Ex. P01979, p. 1; Rupert Smith, Ex. P02086, PT. 17544–17545 (6 November 2007); Ex. D00193, p. 18.

2811 Ex. P02108, p. 42. *See also* Ex. P01979, p. 2. UNPROFOR reported that during this meeting, Mladić and Smith also agreed that the "evacuation of civilians" was to start the following day, on 26 July. Ex. P02108, p. 42. However, the transportation of civilians had already started on 25 July. *See supra* para. 640.

2812 Emma Sayer, T. 10980 (8 March 2011); David Wood, T. 11101 (10 March 2011); Thomas Dibb, Ex. P00741, PT. 16283 (15 October 2007); Ex. D00112, p. 3.

2813 Ex. P01979, p. 3; Emma Sayer, Ex. P01974, PT. 21082–21085 (6 February 2008); Emma Sayer, T. 10975–10976 (8 March 2011); Hamdija Torlak, T. 4392 (25 August 2010); Rupert Smith, Ex. P02086, PT. 17546–17547, 17549 (6 November 2007) (testifying that the meeting with Mladić was at a location overlooking the Žepa valley where "[t]here was a Ukrainian painted white armoured personnel carrier [...] and a lot of Bosnian Serb forces"); Ex. P01979, p. 2, para. 7 (stating that Mladić arrived by helicopter at OP2 for a meeting with Smith at 4:00 p.m. on 25 July 1995), p. 3 (summary of the meeting between Mladić, Smith and Torlak at 7:50 p.m. on 25 July 1996, presumably also at OP2, as Mladić proposed to Smith to reconvene the next day again at OP2, *see* para. 11).

2814 Ex. P01979, p. 3. Torlak did not know the position of the Bosnian government with regard to the POW exchange. He however knew that the War Presidency did not intend to surrender the able-bodied men to the VRS. Hamdija Torlak, T. 4393 (25 August 2010); Emma Sayer, T. 11009–11011 (9 March 2011). Smith and Mladić further agreed during this meeting that the buses transporting civilians to Kladanj would be accompanied by UNPROFOR personnel. Mladić also granted permission for a CNN team to enter Žepa to see how the situation was being

the War Presidency preferred a transportation out of the enclave with UNPROFOR helicopters directly to ABiH-held territory in order to avoid a similar situation to the one in Srebrenica.[2815] Mladić however insisted that the only possibility of leaving the enclave was via the road to Brezova Ravan.[2816]

652. As agreed between Mladić and Smith and with the Accused's authorisation, the first medical convoy comprised of UNPROFOR vehicles started to transport some sick and wounded out of Žepa on 25 July 1995.[2817] On 26 July, the second day of the "evacuation", a Bosnian Serb military doctor and a French UNPROFOR doctor examined the remaining wounded Bosnian Muslims in order to assess their degree of injury,[2818] whereupon the wounded were then registered by the ICRC.[2819] The French UNPROFOR doctor and an ICRC representative conducted a separation of the seriously wounded men who were evacuated separately on that same day,[2820] whereas the 12 lightly wounded men remained in Žepa.[2821] Palić was also present in Žepa and undertook negotiations with the VRS side on the "evacuation".[2822]

653. On 27 July, the Accused agreed that a group of 12 lightly wounded men who had not been evacuated on one of the previous days could leave with the last convoy of civilians.[2823] As Joseph was concerned about the security of these wounded men of military age, he ordered one

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handled. Ex. P01979, p. 3. *See also* Rupert Smith, T. 11731 (23 March 2011); Rupert Smith, Ex. P02086, PT. 17552 (6 November 2007).

2815 Hamdija Torlak, T. 4393 (25 August 2010); Emma Sayer, T. 11073 (9 March 2011). During this meeting Torlak told Smith and Mladić that nobody wanted to stay in Žepa and wanted to leave on the grounds of security concerns. Ex. P01979, p. 3. *See also* Ex. P02108, p. 42 (reporting that if negotiations on the exchange fail, Žepa's men of military age would be killed or captured); Emma Sayer, T. 10976 (8 March 2011) (testifying that it was clear that any man of fighting age was at risk of death, were they to remain in the pocket and recalling the shock and disbelief on Torlak's face when asked by Smith if anyone wanted to stay in the enclave).

2816 Hamdija Torlak, T. 4393 (25 August 2010); Emma Sayer, T. 11079 (9 March 2001).

2817 Thomas Dibb, Ex. P00741, PT. 16283 (15 October 2007); Hamdija Torlak, T. 4394 (25 August 2010), T. 4766 (1 September 2010); Ex. P01979, p. 2; Ex. P01978, p. 1. *See also* Ex. P00367a; Ex. P00577a, p. 3.

2818 Edward Joseph, Ex. P01949, PT. 14186–14187, 14191–14192 (23 August 2007).

2819 PW-006, Ex. P02797, PT. 7019 (7 February 2007); Meho Džebo, T. 14806 (30 May 2011). PW-006 testified that the wounded were told by the ICRC that they were POWs now and they received identity cards and that there were VRS soldiers who were there who mistreated them and told them that they were Serbs and had once been Serbs. PW-006, Ex. P02797, PT. 7019 (8 February 2007); PW-006, Ex. P02796 (confidential), PT. 7146 (private session) (8 February 2007). PW-006 testified that the wounded were instructed by Palić to destroy these identity cards. Whereas some people followed this instruction, PW-006 kept his card. PW-006, Ex. P02797, PT. 7019, 7021 (7 February 2007). The ICRC's role was confined to the evacuation of the wounded. Edward Joseph, Ex. P01949, PT. 14234 (23 August 2007). Sayer believed that the ICRC was mainly involved in observation, assessment, and registration of the wounded. Emma Sayer, T. 10980 (8 March 2011). Dibb had the impression that the ICRC did not want to be involved in the general evacuation process. Thomas Dibb, T. 4931 (6 September 2010); Thomas Dibb, Ex. P00741, PT. 16281, 16283, 16304 (15 October 2007).

2820 Edward Joseph, Ex. P01949, PT. 14186–14187 (23 August 2007).

2821 PW-006, Ex. P02797, PT. 7019 (7 February 2007).

2822 PW-006, Ex. P02797, PT. 7019 (7 February 2007); Edward Joseph, Ex. P01949, PT. 14189 (23 August 2007).

2823 Edward Joseph, T. 10614 (1 March 2011); Edward Joseph, Ex. P01949, PT. 14192 (23 August 2007); PW-006, Ex. P02797, PT. 7019–7022 (7 February 2007); Ex. D00173. p. 3; Thomas Dibb, Ex. P00741, PT. 16291 (15 October 2007). *See also* Meho Džebo, T. 14807 (30 May 2011).

UNPROFOR soldier to accompany the wounded and another to follow the bus.[2824] Hajrić and Imamović, who had been preparing lists of the people boarding the buses, also left Žepa with the last convoy.[2825]

4. Arrest and Detention of POWs and Bosnian Muslim Leaders

654. This last convoy with civilians and wounded together that had left in the direction of Rogatica and Kladanj was then stopped at OP2 in Bokšanica on 27 July 1995 and the wounded were taken care of by French doctors in their APCs.[2826] After some time, Kušić and some escorts entered the bus and asked where Avdo Palić was.[2827] When the passengers remained silent, Kušić answered "there he is in Žepa shitting his pants. I personally killed him".[2828] Torlak, who had been staying at OP2 in Bokšanica since 26 July, met Hajrić and Imamović who arrived there from Žepa with the last convoy.[2829] They were told that the convoy would not be allowed to leave until the "fighters and military-able population" in Žepa surrendered.[2830]

655. Torlak, Hajrić, and Imamović then met with Mladić and Smith, and Mladić reminded them to abide by the 24 July 1995 Agreement.[2831] The atmosphere was tense.[2832] At the end of the meeting, Torlak, Hajrić, and Imamović signed a "capitulation agreement" ("27 July 1995 Agreement") prepared by the VRS which was also signed by Mladić and Kušić.[2833] It comprised the following:

> 1. All able-bodied men from 18 to 55 years of age shall surrender their weapons to the VRS in the presence of UNPROFOR at the UNPROFOR base in Žepa;
>
> 2. All able-bodied men shall be registered by the ICRC and be guarded by the VRS in the presence of UNPROFOR in Žepa until an agreement on POW exchange has been reached;

2824 Edward Joseph, Ex. P01949, PT. 14192 (23 August 2007); Ex. D00173, p. 4. *See also* PW-006, Ex. P02797, PT. 7024 (7 February 2007).

2825 Hamdija Torlak, T. 4402 (25 August 2010), T. 4473–4474 (26 August 2010).

2826 Meho Džebo, T. 14807–14808 (30 May 2011); PW-006, Ex. P02797, PT. 7022 (7 February 2007); Hamdija Torlak, T. 4473 (26 August 2010).

2827 Meho Džebo, T. 14808 (30 May 2011); PW-006, Ex. P02797, PT. 7022–7023 (7 February 2007).

2828 Meho Džebo, T. 14808 (30 May 2011). *See also* PW-006, Ex. P02797, PT. 7022–7023 (7 February 2007).

2829 Hamdija Torlak, T. 4402, 4407 (25 August 2010), T. 4465–4466, 4473–4474 (26 August 2010).

2830 Hamdija Torlak, T. 4474, 4476 (26 August 2010). *See also* Meho Džebo, T. 14883 (31 May 2011). Džebo later heard from Imamović and Hajrić that the Bosnian Serbian side even threatened to kill everyone on the last convoy if their demands were not met. Meho Džebo, T. 14809 (30 May 2011).

2831 Rupert Smith, Ex. P02086, PT. 17553 (6 November 2007); Emma Sayer, Ex. P01974, PT. 21085 (6 February 2008) (testifying that she attended the meeting as well); Louis Fortin, Ex. P00587, PT. 18282–18284 (27 November 2007) (testifying that Mladić was assisted by the Accused and that Germain and Baxter from UNPROFOR and Indić from the VRS were also present); Edward Joseph, Ex. P01949, PT. 14201 (23 August 2007); Ex. P01980, p. 1; Ex. P01956, p. 2; Hamdija Torlak, T. 4476 (26 August 2010) *See also* Meho Džebo, T. 14883 (31 May 2011); Ex. D00055, p. 31.

2832 Hamdija Torlak, T. 4474–4476 (26 August 2010).

2833 Ex. P00736; Ex. P01980, p. 1; Ex. P01956, p. 2; Hamdija Torlak, T. 4474, 4478, 4483 (private session) (26 August 2010). Although Sejmon Dudnjik's name is typed onto the Agreement, he did not sign. Ex. P00736, p. 2; Hamdija Torlak, T. 4485 (private session) (26 August 2010).

> 3. Upon an agreement on the POW exchange being reached, all registered able-bodied men shall be safely escorted by UNPROFOR and evacuated to a territory of their free choice.[2834]

656. The Bosnian Muslim leaders signed the agreement under pressure as the last convoy had been intercepted and was not allowed to proceed unless they agreed to a capitulation.[2835] Smith assessed retrospectively that this agreement could only have been signed under duress since Žepa was completely in the hands of the VRS at this stage.[2836] Despite Torlak telling Mladić that the 27 July 1995 Agreement could not be effective since no one had the power to implement the capitulation,[2837] Mladić said that those men who would not surrender their weapons by 6:00 p.m. would be "liquidated".[2838] Smith explained at the meeting that the BiH government was unlikely to accept this agreement since they have not been involved.[2839] Mladić became dismissive and "scornfully" replied that Muratović had had ample opportunities to meet Mladić at OP2 but had consistently refused to do so.[2840] Smith further stressed that UNPROFOR could not be involved as a participant in the 27 July 1995 Agreement.[2841]

657. Approximately one hour after the meeting, Torlak and Imamović were sent to two different buses in the last convoy from Žepa that had been waiting in Bokšanica in the meantime.[2842] Hajrić was sent by the Bosnian Serb side to the Žepa mountain to urge the soldiers to surrender.[2843] He informed them that all those who were involved in crimes would be prosecuted, whereas the rest would be allowed to leave the area unhindered.[2844] Upon his return to OP2 shortly before midnight, Hajrić conveyed the categorical refusal to surrender of the soldiers in the mountain.[2845] The Accused personally was informed by telegram of an intercepted ABiH communication of 27 July that the ABiH expected to evacuate the members of the Žepa Brigade after the civilians had been evacuated and that the 24th Division of the 2nd Corps of the ABiH would be ready to intervene in case of any incidents during the evacuation.[2846]

658. Around 9:00 or 10:00 p.m. in the night of 27 July Torlak and Imamović were taken off the different buses at Bokšanica where they had been waiting and brought to the UNPROFOR

2834 Ex. P00736, p. 1; Ex. P01980, p. 1.
2835 Hamdija Torlak, T. 4478 (26 August 2010).
2836 Rupert Smith, T. 11695 (23 March 2011).
2837 Hamdija Torlak, T. 4474, 4476 (26 August 2010). *See also* Rupert Smith, Ex. P02086, PT. 17553–17554 (6 November 2007).
2838 Ex. P01980, p. 1; Emma Sayer, T. 10983–10984 (8 March 2011); Emma Sayer, Ex. P01974, PT. 21085 (6 February 2008) (recalling that Mladić used the specific term "liquidated"); Ex. P01956, p. 2.
2839 Ex. P01980, p. 1; Emma Sayer, T. 10983 (8 March 2011).
2840 Ex. P01980, p. 1; Emma Sayer, T. 10983 (8 March 2011).
2841 Rupert Smith, Ex. P02086, PT. 17555–17556 (6 November 2007); Ex. P01980, p. 1.
2842 Hamdija Torlak, T. 4474–4475 (26 August 2010).
2843 Hamdija Torlak, T. 4774, 4777 (1 September 2010); Meho Džebo, T. 14808–14809 (30 May 2011).
2844 Meho Džebo, T. 14809 (30 May 2011).
2845 Meho Džebo, T. 14809 (30 May 2011), T. 14883 (31 May 2011).
2846 Ex. P00483, p. 2.

compound at OP2 where VRS soldiers told them that they were under arrest and had the status of POWs.[2847] Both Žepa leaders were handcuffed and driven to the Borike Hotel where they were guarded by some VRS MP officers.[2848]

659. After Torlak and Imamović were taken off the buses, the last convoy was allowed to continue its journey towards Kladanj.[2849] During a stop in Luke near Tišća, a MP officer with a white belt who was escorting the Accused entered the bus in which the 12 slightly wounded men were present and asked whether there were any wounded.[2850] When answered in the affirmative,[2851] the officer got off the bus and took an A4-sized paper from the Accused who was standing outside the bus and called out the names of the 12 wounded men.[2852] The MP officer then ordered these men to get off the bus and to enter a second bus facing the opposite direction.[2853] The wounded were joined by 28 elderly men who had been taken from buses which had been traveling during the night of 26 July and had already spent a night in Luke.[2854] The bus with the wounded and elderly men then drove to the Rasadnik Prison near Rogatica.[2855]

660. The removal of these 40 persons (12 wounded and 28 elderly) was discussed during a meeting between the Accused and Gobilliard at OP2 in Bokšanica in the late afternoon of the following day, 28 July.[2856] Gobilliard expressed his outrage about this incident.[2857] The Accused explained that these civilians were in fact men of military age and that they had lied about their age in order to escape from Žepa.[2858] The Accused knew the names of these persons because he

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2847 Hamdija Torlak, T. 4474–4475 (26 August 2010); Meho Džebo, T. 14808–14809 (30 May 2011). Torlak understood that he was arrested because he had not secured the disarmament of the ABiH, as agreed in the 24 July 1995 Agreement. Hamdija Torlak, T. 4778–4779 (1 September 2010).

2848 Hamdija Torlak, T. 4475–4476 (26 August 2010). *See also* Ex. P00104, p. 12 (map indicating the location of Žepa, OP2, and Borike). UNPROFOR soldiers were also present during the arrest. Hamdija Torlak, T. 4475, 4494 (26 August 2010).

2849 PW-006, Ex. P02797, PT. 7023 (7 February 2007); Meho Džebo, T. 14811 (30 May 2011); Hamdija Torlak, T. 4475 (26 August 2010) (testifying that he heard that instructions were given for the convoy to head to Kladanj and that he heard the engines being started and the buses setting off). Dibb testified that, despite the protest of UNPROFOR, the Accused prevented Hajrić from leaving. Thomas Dibb, T. 4913 (6 September 2010); Thomas Dibb, Ex. P00741, PT. 16291, 16297 (15 October 2007).

2850 Meho Džebo, T. 14812 (30 May 2011).

2851 Meho Džebo, T. 14812 (30 May 2011).

2852 PW-006, Ex. P02797, PT. 7023–7024 (7 February 2007); Meho Džebo, T. 14811–14812 (30 May 2011) (testifying that the underlying list contained 13 names but one of them had already been evacuated the day before), T. 14855 (31 May 2011). It further was reported that during the stop, money was taken from the Bosnian Muslim men. The Accused ordered this incident to be investigated. Ex. P01434, pp. 5–6.

2853 PW-006, Ex. P02797, PT. 7024 (7 February 2007); Meho Džebo, T. 14812 (30 May 2011). *See also* Hamdija Torlak, T. 4803 (2 September 2010); Ex. P02108, p. 63.

2854 PW-006, Ex. P02797, PT. 7024 (7 February 2007); Meho Džebo, T. 14812–14813 (30 May 2011). *See also* Hamdija Torlak, T. 4803 (2 September 2010); Ex. P02108, p. 63.

2855 PW-006, Ex. P02797, PT. 7024 (7 February 2007); Meho Džebo, T. 14813–14814 (30 May 2011); Hamdija Torlak, T. 4495 (26 August 2010).

2856 Ex. P00582, p. 1; Louis Fortin, T. 3080–3081 (23 June 2010); Louis Fortin, Ex. P00587, PT. 18288–18289 (27 November 2007), PT. 18401 (28 November 2007). Louis Fortin was also present and produced handwritten notes after the meeting. *Ibid.*

2857 Ex. P00582, p. 1.

2858 Ex. P00582, p. 2 (the Accused further explained that these detainees would be held in the Rasadnik Prison in

possessed a list of all men of military age from Žepa and cross-referenced the list with the list for the convoys.[2859]

661. During the meeting the Accused and Gobilliard further discussed the estimates of how many people were still left in Žepa.[2860] The Accused repeatedly offered his personal guarantees to allow the "evacuation" of the remaining civilians, stressing however, that according to his knowledge there were no civilians left in Žepa anymore.[2861] The Accused offered the UN the opportunity to send vehicles to gather the remaining Bosnian Muslim civilians and military members who were in the mountains; however, UNPROFOR—afraid that another Srebrenica could repeat itself—did not consider this a good idea as long as there was no global agreement.[2862] Shortly after the meeting, the VRS arrested Hajrić[2863] and took him to the Borike Hotel.[2864]

662. After the arrest of Torlak, Imamović and Hajrić and the completed transportation of people from Žepa, Palić, the only remaining member of the ABiH, stayed at the UNPROFOR compound in Žepa on 27 July.[2865] After the final convoy had left Žepa on 27 July, two VRS soldiers came to the UNPROFOR compound and took him away.[2866]

663. On 28 July the bus with the 40 elderly and wounded arrived at the Rasadnik Prison near Rogatica[2867] and the men were searched.[2868] The Accused was present for a short period of time and told the prisoners that they would be detained until an agreement on a POW exchange was

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Rogatica, where they were to be registered by the ICRC and then exchanged after an agreement on a POW exchange had been set up).

2859 Ex. P00582, p. 2.

2860 Ex. P00582, p. 3.

2861 Ex. P00582, p. 3.

2862 Ex. P00582, pp. 3–4; Louis Fortin, T. 3082–3083 (23 June 2010).

2863 Ex. P00582, p. 4; Louis Fortin, Ex. P00587, PT. 18293 (27 November 2007) (testifying that he did not witness the arrest since it happened after the meeting, but received the information afterwards and thus was able to include this incident in his notes).

2864 Hamdija Torlak, T. 4495 (26 August 2010).

2865 Meho Džebo, T. 14807 (30 May 2011). In Žepa, Torlak saw Palić for the last time when he left Žepa for Bokšanica on 26 July. Hamdija Torlak, T. 4402–4403 (25 August 2010), T. 4803 (2 September 2010). *See also* PW-006, Ex. P02797, PT. 7018 (7 February 2007) (testifying that he saw Palić in Žepa in the morning of 26 July). Palić stayed alone in a small tent built in front of the school on the UN compound. Meho Džebo, T. 14807 (30 May 2011). *See also* Ex. P02252; Meho Džebo, T. 14837 (31 May 2011) (mark "3" indicating the place where Džebo saw Palić for the last time).

2866 Edward Joseph, Ex. P01949, PT. 14197–14199 (23 August 2007). *See also* Dragomir Pećanac, T. 18191, 18196 (private session) (17 January 2012); Hamdija Torlak, T. 4801 (2 September 2010). Joseph testified that the two VRS soldiers had an aggressive demeanour. Joseph and Bezruchenko, who both witnessed this incident, were concerned about Palić's fate. They tried to follow the vehicle Palić was transported in but lost it after a while. They also tried to obtain information at OP2 without success. Edward Joseph, Ex. P01949, PT. 14197–14199 (23 August 2007).

2867 The Rasadnik Prison was on the premises of the Rasadnik agricultural co-operative in the south of Rogatica. Meho Džebo, T. 14813 (30 May 2011). *See also* Zoran Čarkić, T. 12755 (private session) (13 April 2011); Ex. P00104, p. 12 (map indicating the location of the Rasadnik Prison, labelled as "Rogatica Prison").

2868 Meho Džebo, T. 14813 (30 May 2011). The Accused ordered that the items that were taken away were listed and returned upon their release. Meho Džebo, T. 14814 (30 May 2011), T. 14855 (31 May 2011).

reached.[2869] He ordered that the wounded and elderly prisoners were to be held in separate rooms.[2870] Zoran Čarkić, one of the Accused's subordinates, conducted interviews with the prisoners.[2871]

664. The prisoners were beaten at night by policemen who replaced the prison wardens during the nightshifts.[2872] After approximately ten days, the prisoners received work duties, and the beatings decreased.[2873] In a separate room—the so-called "infamous" room—some other prisoners were held who were beaten and tortured most of the time.[2874] On 15 January 1996, all prisoners from the Rasadnik Prison who had not been removed in the meantime were transferred to a prison in Kula close to the Sarajevo Airport and were exchanged at the airport four days later.[2875]

665. After the Žepa leaders, Torlak and Imamović, were taken off their respective buses in Bokšanica during the night of 27 July, they spent a few days in separate rooms in the Borike Hotel—the same location in which Hajrić was held[2876]—where they were guarded by VRS military police officers.[2877] On or about 30 July, the three Žepa representatives—Torlak, Imamović and Hajrić—were taken to the Rasadnik Prison and held in a third room separate from the other prisoners.[2878] Hajrić, Imamović and Torlak stayed in the same room in the Rasadnik Prison for a maximum of two weeks.[2879] Imamović and Hajrić were removed in mid-August and never

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2869 Meho Džebo, T. 14813–14814 (30 May 2011). The Accused explained that the Bosnian Serbian side generally approved of their evacuation but only under the condition that 48 VRS soldiers were released at the Dubrava Airport near Tuzla. Meho Džebo, T. 14813 (30 May 2011), T. 14881–14882 (31 May 2011). The detention facilities were open for ICRC visits. Đoko Razdoljac, T. 8278 (30 November 2010).

2870 Meho Džebo, T. 14814 (30 May 2011). Džebo does not recall having seen the Accused in the Rogatica Prison after this time. Meho Džebo, T. 14860 (31 May 2011). The wounded were bandaged and visited and registered by the ICRC on 30 July 1995. Meho Džebo, T. 14829 (31 May 2011); Ex. D00211; Ex. P01434, pp. 4–5. The ICRC returned for visits on 21 August, 23 October, and 27 October 1995. Ex. P02253.

2871 Meho Džebo, T. 14820 (30 May 2011).

2872 Meho Džebo, T. 14816–14817 (30 May 2011), T. 14831 (31 May 2011). When the prisoners were taken outside or wanted to use the bathroom, they were forced to sing Serbian songs. Meho Džebo, T. 14828, 14831 (31 May 2011).

2873 Meho Džebo, T. 14817 (30 May 2011), T. 14831 (31 May 2011).

2874 Meho Džebo, T. 14818 (30 May 2011), T. 14841 (31 May 2011). In January 1996 Džebo saw three of the prisoners who had been held in that room—Jasmin Kulovac, Enver Krasić, and Kadrija Sulejmanović. He learnt from one of them that Mujo Hodžić and Mujo Paraganlija spent ten days in the "infamous" room and were then taken away. Meho Džebo, T. 14818 (30 May 2011), T. 14841–14842, 14863 (31 May 2011). The remaining prisoners in the "infamous" room were not mixed with the other prisoners until 11 January 1996 when they were registered by the ICRC. Meho Džebo, T. 14840–14841 (31 May 2011).

2875 Meho Džebo, T. 14848 (31 May 2011); PW-006, Ex. P02797, PT. 7025 (7 February 2007); Ramiz Dumanjić, T. 17948 (29 September 2011).

2876 *See supra* paras. 658, 988, n. 2849.

2877 Hamdija Torlak, T. 4475–4476, 4494–4495 (26 August 2010); Ex. P00104, p. 12 (map indicating the Borike Hotel close to OP2 at Bokšanica).

2878 Hamdija Torlak, T. 4401 (25 August 2010), T. 4495 (26 August 2010), T. 4779–4780 (1 September 2010); Meho Džebo, T. 14818 (30 May 2011), T. 14826 (31 May 2011), Ex. P01434, (VRS report of 30 July listing 44 POWs, amongst them Hajrić, Torlak, and Imamović). Upon their arrival, they were registered by the ICRC and were allowed to contact their families. Hamdija Torlak, T. 4495–4496 (26 August 2010), T. 4780 (1 September 2010), T. 4798 (2 September 2010). Hajrić was allowed to pray five times a day. Ex. P01434, p. 5; Meho Džebo, T. 14827 (31 May 2011).

2879 Meho Džebo, T. 14827 (31 May 2011). Hajrić and Imamović also spent some days in the "infamous" room and

returned.[2880] Torlak was ultimately exchanged with the remaining prisoners in January 1996.[2881] He speculated that he was not killed because his appearance at negotiations with Mladić was well documented on video.[2882]

666. With regard to the "men of military age" from Žepa, the Chamber heard evidence that by 8:00 a.m. on 28 July 1995, they still had not surrendered and continued to hide in the mountains.[2883] When Joseph inquired that morning with Mladić about the whereabouts of Palić, Mladić answered that Palić was dead.[2884] Asked in the late afternoon by Gobilliard whether Palić was indeed dead, the Accused answered that he could not confirm this information and that it was possibly propaganda.[2885]

667. UNMO reported in its daily Situation Report to its Headquarters that on 29 July there was intense shelling in and around Žepa with 23 explosions and four to five outgoing mortar rounds.[2886]

668. Also on 29 July, Muratović sought through UNPROFOR a meeting at the Sarajevo Airport with the VRS to resume the negotiations on the all-for-all prisoner exchange "at a higher level".[2887] However, shortly before the actual meeting, the VRS called off its attendance insisting that the Bosnian Muslims should accept the 24 July 1995 Agreement before the VRS might be willing to discuss the fate of the Bosnian Muslim men from Žepa any further.[2888]

669. During a subsequent conversation between Mladić and Joseph, Mladić said that the VRS was planning to seize a number of Bosnian Muslim soldiers who they considered "war criminals", regardless of what agreement was reached.[2889] Joseph was concerned that some of the Bosnian Muslim men would be in mortal danger if they fell into Mladić's control as the VRS would exercise wide discretion as to whom they would conceive as a "war criminal" and permit to leave or not.[2890]

670. On the same day, another meeting at the Sarajevo Airport was held between the VRS, represented by Indić, and the Bosnian Muslims; however, little progress was made on prisoner

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were beaten. Meho Džebo, T. 14841–14842, 14865 (31 May 2011).

2880 Hamdija Torlak, T. 4401 (25 August 2010), T. 4496 (26 August 2010), T. 4790 (1 September 2010); Meho Džebo, T. 14863 (31 May 2011).

2881 Meho Džebo, T. 14818 (30 May 2011); Hamdija Torlak, T. 4799–4800, 4803–4804 (2 September 2010).

2882 Hamdija Torlak, T. 4408–4409 (25 August 2010).

2883 Ex. P01980, p. 2.

2884 Ex. P02108, p. 62; Edward Joseph, Ex. P01949, PT. 14207 (23 August 2007).

2885 Ex. P00582, p. 5; Louis Fortin, Ex. P00587, PT. 18294–18295 (27 November 2007).

2886 Ex. P00753, p. 3. No firing activity was reported by the UNMO Team on 30 July 1995. *Ibid.*

2887 Ex. P02108, p. 66. *See also* Ex. P02108, p. 68 (written proposal for the scheduled meeting, drafted by Muratović).

2888 Ex. P02108, p. 66. The VRS further stated that they were interested in one-for-one exchanges of a number of POWs from various parts of the country. *Ibid.*

2889 Edward Joseph, T. 10560–10563 (28 February 2011); Ex. P02108, p. 67.

2890 Edward Joseph, T. 10561–10563 (28 February 2011).

exchange.[2891] An UNPROFOR report of 29 July stated that the Accused had told Gobilliard that the Bosnian Muslim men of Žepa could be directly evacuated if the Bosnian Muslims would accept an all-for-all prisoner exchange.[2892] Despite this assurance, Joseph remained concerned about the ultimate safety of these Bosnian Muslim men from Žepa.[2893]

671. A report issued by the Accused on 29 July stated that combat operations should continue against the Žepa Brigade until the Bosnian Muslims had carried out the agreed exchange and implemented the 24 July 1995 Agreement.[2894] The Accused further instructed that the VRS should not register persons captured before the cessation of combat activities and should not report them to international organisations and that they should be kept for exchange in case the Bosnian Muslims did not carry out the agreement or managed to break through from the encirclement.[2895]

672. Pećanac informed the Accused personally by letter of 29 July, *inter alia*, that he had informed UNPROFOR in a meeting that morning that he had received assurances from Hajrić and Imamović on 27 July that all civilians had left the enclave of Žepa.[2896] He also informed him that he had unconfirmed information that elements of the ABiH Žepa Brigade were trying to break through on the right bank of the Drina River probably with intention of surrendering to the Serbian MUP.[2897]

673. By 31 July, the negotiations on Žepa and an all-for-all prisoner exchange stopped.[2898] By this time, the entire VRS Command, including Mladić, the Accused, Gvero and Milovanović had moved to Banja Luka and Mladić seemed concerned with other developments in the south-west of the country, while "Žepa had rather fallen off his agenda".[2899] During a final meeting that day between Smith, Mladić and Gvero at the Balkana Motel in Mrkonjić Grad near Banja Luka, Mladić made clear that the "evacuation" of the civilian population out of Žepa was complete and claimed that the Bosnian Muslim soldiers had started to break out on three routes, south towards Goražde, west towards Kladanj, and over the river, to Serbia.[2900]

2891 Ex. P02108, p. 71.
2892 Edward Joseph, T. 10563–10566 (28 February 2011); Ex. P02108, p. 72.
2893 Edward Joseph, T. 10563, 10565 (28 February 2011).
2894 Ex. P00122, p. 2; Ex. P00152.
2895 Ex. P00122, p. 2; Ex. P00152.
2896 Ex. P00486, pp. 1–2.
2897 Ex. P00486, pp. 1–2.
2898 Ex. P02108, p. 76.
2899 Ex. P02108, pp. 76–77; Rupert Smith, T. 11566 (21 March 2011).
2900 Rupert Smith, T. 11567 (21 March 2011); Rupert Smith, Ex. P02086, PT. 17557–17560 (6 November 2007); Ex. P01981; Ex. P02108, pp. 76–77. *See also* Emma Sayer, Ex. P01974, PT. 21090 (6 February 2008); Emma Sayer, T. 10987 (8 March 2011).

674. Žepa's military aged men indeed did not surrender but hid in the hills surrounding Žepa and fled either through RS territory to Kladanj or to Serbia crossing the Drina River.[2901] The able-bodied men from Žepa who fled to the Drina River crossed to Serbia by swimming and using self-made wooden rafts or tyres they found at the river bank.[2902] Their decision not to go with their families but rather to flee stemmed from their fear for their lives, especially after rumours had spread of what had happened in Srebrenica.[2903]

675. On the basis of several intercepts, the Chamber finds that the VRS attempted to have the Serbian authorities hand over to them the Bosnian Muslim men who had taken flight over the Drina River to Serbia.[2904] On 1 August, a person at the VRS Main Staff called "Stevo" had an intercepted

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2901 Hamdija Torlak, T. 4728 (1 September 2010) (referring to the "army"), T. 4809–4811 (2 September 2010) (referring to "all men of military age"); PW-005, T. 2249 (31 May 2010); Meho Džebo, T. 14885, 14908 (31 May 2011) (referring to "army members" and "members of the BiH army"); Ex. D00111 (a list of males who crossed into Serbia and were captured); Hamdija Torlak, T. 4794–4795 (2 September 2010) (testifying that the men on Ex. D00111 were the men from Žepa who refused to disarm). *See also* Rupert Smith, Ex. P02086, PT. 17560, 17582 (6 November 2007); Rupert Smith, T. 11567–11568 (21 March 2011), T. 11596, 11599–11600, 11602, 11606–11607 (22 March 2011); Richard Butler, T. 16857–16858 (19 July 2011); Mirko Trivić, T. 8600 (7 December 2010), Mirko Trivić, Ex. P01197, PT. 11997 (23 May 2007) (confirming that part of the ABiH Žepa Brigade withdrew in an organised manner by swimming across the Drina River and other parts went in the direction of Kladanj); Ex. P00755 (a combat report dated 8 August by Kušić, the Commander of the Rogatica Brigade, informing the Drina Corps Command of the liquidation of five Bosnian Muslims who "after the fall of Žepa" were traveling in the area west of Žepa and "an unarmed Ustasha" born in Srebrenica who said that he had fallen behind the others). The Prosecution in its Final Brief alleged that the killing of five Bosnian Muslims from Žepa and a 24-year-old man from Srebrenica were a natural and foreseeable consequence of both the JCE to Forcibly Remove and the JCE to Murder, while however none of these allegations are included in the Indictment. Prosecution Final Brief, paras. 797, 800–801. The Chamber notes paragraphs 22.1–22.4 of the Indictment which list specific incidents of opportunistic killings that were allegedly the natural and foreseeable consequence of the two JCEs, however no language exists to the effect that there may be any incidents of opportunistic killings other than those described in these paragraphs. The Chamber finds that these paragraphs are not to be read as merely describing examples and the Accused would be entitled to ask why the alleged killings referred to in Ex. P00755 were not the subject of an additional paragraph 22.5 of the Indictment, if the intention was that they should be part of the case against him. The prejudicial effect of a defective indictment may only be "remedied" if the Prosecution provides the accused with clear, timely and consistent information that resolves the ambiguity or clarifies the vagueness, thereby compensating for the failure of the indictment to give proper notice of the charges. *Martić* Appeal Judgement, para. 163. The Chamber however finds that the fact that the killings are also referred to in paragraph 189 and footnote 303 of the Prosecution Pre-Trial Brief is not sufficient for this purpose because the problem with regard to these specific incidents is not any ambiguity or vagueness of the Indictment but rather the straightforward non-inclusion of these incidents. The Chamber will, for the reasons set out, not regard the alleged killings referred to in Ex. P00755 as part of the case against the Accused. *See also* Hamdija Torlak, T. 4821 (2 September 2010) (testifying that he also heard about a group of 12 to 14 Žepa fighters who were captured and killed). On 1 August 1995, Čarkić reported that on 31 July, several men from Žepa surrendered to the Yugoslav Army and MUP and that others were registered in Crni Potok, and it seemed they were attempting to cross over the Drina River. Ex. P02606, p. 2.

2902 PW-013, T. 9870–9873 (14 February 2011), T. 9878–9879, 9882–9883 (15 February 2011), T. 9981 (16 February 2011); Ex. P01815 (map marked by PW-013 in court indicating where he crossed the Drina River); Nesib Salić, T. 13242–13248, 13264 (26 April 2011). Salić himself only turned 15 in July 1995. Nesib Salić, T. 13233 (21 April 2011), T. 13239, 13247–13249 (26 April 2011); Ex. P02189 (map marked by Salić in court indicating the route the men took to reach and cross the Drina River). *See also* Ex. P02557, p. 4.

2903 PW-013, T. 9886–9887 (15 February 2011); Hamdija Torlak, T. 4821 (2 September 2010) (testifying that these men were afraid "of being killed without due process, without ever being able to say something"); Rupert Smith, T. 11597 (22 March 2011) (testifying that there was a high probability, especially as it was becoming clear at that time that the missing men from Srebrenica were not alive, that the men from Žepa who did not escape would be captured or killed).

2904 Ex. P00345 (confidential); Ex. P00346 (confidential); Ex. P00347 (confidential); Ex. P00528a; Ex. P00529a; Ex. P00529c.

conversation with a person in Serbia called "Jevtić" about the Bosnian Muslim men who had crossed the Drina river; Stevo told Jevtić, who was in Serbia at that time, to "hand [the men that you catch] over alive to our men".[2905] Stevo then put Jevtić through to Beara and Beara said that he would meet Jevtić.[2906] Later on the same day, Beara, who was in Serbia at the time, complained in an intercepted conversation with Stevo that they could not stop "parcels" from crossing over to Serbian territory because ICRC and UNHCR members were filming and registering the Bosnian Muslims.[2907] Beara proposed to request that "the ICRC escort them to us and they can be exchanged here", since "[w]e had no plans to kill them, [...] but to exchange them".[2908] On the following day, 2 August, Krstić ordered Popović to accompany Svetozar Kosorić, the Chief of Intelligence of the Drina Corps, to Bajina Bašta, a village across the Drina River in Serbia, to arrange for the return of the Bosnian Muslim men from Žepa.[2909] Shortly afterwards on the same day, Krstić explicitly told Popović "I want you to bring me Turks back here".[2910] Popović reported to Beara that some 500–600 Bosnian Muslim men were currently held in custody but that the Serb authorities would not allow anyone to have access to them.[2911]

676. By 2 August the village of Žepa was empty, except for a few remaining VRS soldiers who looted and burned the houses in the enclave and in the surrounding villages.[2912] The VRS also blew up the mosque in the centre of Žepa.[2913]

2905 Ex. P00345 (confidential), pp. 1–2. "Stevo" is identified as being from the VRS Main Staff in an intercept of the conversation later that day between Stevo and Beara. Ex. P00346 (confidential), p. 1.

2906 Ex. P00345 (confidential), p. 3.

2907 Ex. P00346 (confidential), p. 1.

2908 Ex. P00346 (confidential), p. 2. *See also* Ex. P00347 (confidential).

2909 Ex. P00528a; Richard Butler, T. 16860–16861 (19 July 2011).

2910 Ex. P00529a; Ex. P00529c; Richard Butler, T. 16861–16862 (19 July 2011).

2911 Ex. P00529a; Ex. P00529c; Richard Butler, T. 16861–16862 (19 July 2011). Krstić ordered Popović to "bring the Turks back [as t]hey're our Turks". When Popović said that the Serbian MUP was not allowing access to them, Krstić said he would "turn the gun barrels on them". *Ibid.*

2912 Ex. P02108, p. 79. *See also* Thomas Dibb, Ex. P00741, PT. 16284, 16292, 16348, 16350–16351, 16354, 16316 (15 October 2007); Ex. P02178, pp. 2, 4, 6 (aerial photographs showing the destruction of Žepa and surrounding areas); Ramiz Dumanjić, T. 17940 (29 September 2011) (testifying that "the Serb Army" set houses ablaze when he left Žepa); Đoko Razdoljac, T. 8265–8266 (30 November 2010); Meho Džebo, T. 14834, 14836–14839 (31 May 2011) (testifying that when his family returned in 2001, all, except one, of the neighbouring privately owned family houses have been torched and that he was not aware of any Muslims who burned their own property before they left in July 1995 in order to be evacuated); Esma Palić, T. 13324–13325 (27 April 2011) (also testifying that when she returned to Žepa eight years later, "all houses were destroyed" and "some neighbourhoods were completely erased"). *See also* testimony of Mirko Trivić who testified that his unit set alight hay or small huts to mark their advance. This was akin to smoke signals and needed owing to the type of the terrain. He further testified that Krstić demanded his unit to act more responsibly because several houses had been burnt. Mirko Trivić, Ex. P01197, PT. 11906–11907 (22 May 2007); Mirko Trivić, T. 8734–8736, 8740 (10 December 2010). Ex. P00749, p. 1 (a memorandum by David Harland in which he reported on information received from Colonel Baxter on 26 July that many burning houses in the hills were *apparently* burned by departing Bosnian Muslims (emphasis added)). The Chamber recalls the testimony of Thomas Dibb that it was "absolutely inconceivable" that Bosnian Muslims torched their own houses in Žepa town as by the time it started happening "Bosnian Serb Forces, Greek mercenaries and others" were there. Thomas Dibb, Ex. P00741, PT. 16350–16351 (15 October 2007). By 3 August, UNPROFOR as well as the French reinforcement forces had withdrawn from

5. Whereabouts and Disappearance of Avdo Palić (July–September 1995)

677. After Palić was taken away from the UNPROFOR compound on 27 July, he was taken at some point to the Borike Hotel.[2914] However, Palić "enjoyed a special status" from the moment he was detained and Čarkić was ordered to provide him with maximum security.[2915] To secure this protection, Čarkić fetched Palić from the Borike Hotel and took him to his own apartment in Rogatica on either 29 or 30 July 1995.[2916] The Accused authorised a report dated 30 July which stated that pursuant to the Accused's "orders and instructions" Palić—referred to as "Atlantida" and described as "a 'picture' of health"—was "in the safe place and at another location" and had "better accommodation".[2917] Palić was visited by Beara in Čarkić's apartment, who told him that a major exchange was planned in view of Palić's high status.[2918]

Žepa, leaving no international presence in the enclave. Other organizations, as UNHCR and the ICRC continued to operate from their bases in Pale. Ex. P02108, pp. 83–85, 87; Rupert Smith, T. 11573–11576 (21 March 2011).

2913 Đoko Razdoljac, T. 8263–8266, T. 8269–8270 (30 November 2010) (testifying that he was in Žepa with his unit, the Rogatica Brigade, when the central mosque was blown up, but that because the Rogatica Brigade did not have explosives experts, five or six VRS soldiers, referred to as "sappers", dressed in uniform, came to Žepa to blow up the mosque); Thomas Dibb, Ex. P00741, PT. 16297–16298 (15 October 2007); Hamdija Torlak, T. 4390–4391 (25 August 2010), T. 4498 (26 August 2010); Ex. P02192 (aerial photograph of 27 July 1995 showing Žepa's central mosque); Ex. P02799, p. 162 (video still taken from Ex. P02798, Disc 4, 00:37:53 showing Žepa's mosque still standing on 25 July 1995); Ex. P02178, p. 6 (aerial photograph of 24 August 1995 showing the destruction of Žepa, including the mosque).

2914 Hamdija Torlak, T. 4801–4802 (2 September 2010) (testifying that Palić was held possibly at Borike Hotel); Zoran Čarkić, T. 12763 (private session) (13 April 2011). A dispatch from the Sarajevo CJB of 29 July confirms that Palić was being held as a POW and advises that the MUP and VRS Main Staff should reach an agreement on his further treatment. Ex. P02801. A further communication from the Sarajevo CJB of August 1995 indicates that Palić and others are charged with organizing, ordering and participating in an attack on a VRS column in the Žepa canyon and killing two severely wounded VRS soldiers and treating cruelly the surviving VRS prisoners of war. Ex. P02802, p. 1. A report from the Accused dated 28 July reveals that Palić had been interrogated about the positions of mines. Ex. P00150. After Esma Palić reported Palić as missing to the ICRC, the ICRC informed her that Mladić had said that he had fled through the woods and probably died in the process. Esma Palić, T. 13326 (27 April 2011).

2915 Zoran Čarkić, T. 12754–12755 (private session), 12758–12759 (private session) (13 April 2011), T. 12902 (private section) (14 April 2011). Čarkić testified that the reason for this order and for Palić being referred to by a code-name was that Palić was in constant threat of retributions for his involvement in the attack on Zlovrh. Zoran Čarkić, T. 12756 (private session), 12759 (private session) (13 April 2011). Palić's name was given on a "need-to-know" basis that was available only to commanders and security officers. Zoran Čarkić, T. 12756 (private session) (13 April 2011).

2916 Zoran Čarkić, T. 12754, 12763 (private session) (13 April 2011), T. 12782 (private session) (14 April 2011). *See also* Ex. P01434, pp. 4–5; Milenko Todorović, T. 13002–13004 (19 April 2011).

2917 Ex. P01434, p. 3. "Atlantida" was the code name for Palić and the accommodation referred to in the report was Čarkić's apartment. Zoran Čarkić, T. 12754 (private session) (13 April 2011). *See also* Milenko Todorović, T. 13002–13004 (19 April 2011).

2918 Zoran Čarkić, T. 12759–12760 (private session) (13 April 2011). *See also* Esma Palić, T. 13331 (private session) (27 April 2011), T. 13415 (28 April 2011). He was further interrogated by the MUP Rogatica, the State Security Service of Sokolac. Zoran Čarkić, T. 12892 (private session) (14 April 2011).

678. Palić was held in Čarkić's apartment for approximately ten days.[2919] On 10 August 1995, Čarkić received an order from Beara to secretly transport Palić to the Mlin Military Prison in Bijeljina.[2920]

679. At 1:00 a.m. on 5 September 1995, Pećanac[2921] collected Palić from the prison in Bijeljina.[2922] Palić was taken during that night to Han Pijesak.[2923]

6. Identification of the Bodies of Mehmed Hajrić, Amir Imamović and Avdo Palić

680. DNA analysis revealed the presence of Mehmed Hajrić, Amir Imamović and Avdo Palić among the remains recovered from a grave containing nine bodies that was exhumed on 12 November 2001 in Vragolovi near Rogatica.[2924] The autopsy report for each of the three shows that

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2919 Zoran Čarkić, T. 12754 (private session) (13 April 2011), T. 12782 (private session) (14 April 2011). The ICRC did not visit Palić while he was staying at Čarkić's apartment. Zoran Čarkić, T. 12760 (private session) (13 April 2011).

2920 Zoran Čarkić, T. 12890–12891 (private session), 12894 (private session) (14 April 2011); Ex. P02176 (order of 10 August signed by Beara for the transfer of Palić to the Mlin Military Prison). Despite the reference in Ex. P02176 to "the night of 10 to 11 June 1995", it is clear from the context that the night of 10 to 11 August must be meant. Milenko Todorović, T. 13001 (19 April 2011); Zoran Čarkić, T. 12782 (private session) (14 April 2011). *See also* Hamdija Torlak, T. 4802 (2 September 2010); Esma Palić, T. 13326–13327, 13329 (27 April 2011). Čarkić handed Palić over to some security officers in Bijeljina. Zoran Čarkić, T. 12896–12897 (private session) (14 April 2011). The order requests that Beara is to be personally informed by telephone about the execution of the task. Ex. P02176, p. 1.

2921 *See* Annex C: Confidential Annex; Ex. P02182.

2922 Ex. P02182 (receipt signed by Pećanac confirming the transfer of Palić from the Bijeljina Prison on 5 September 1995 at 1:00 a.m.); Ex. P02183, pp. 16, 78–82; Milenko Todorović, T. 13002–13004 (19 April 2011). *See also* Esma Palić, T. 13330 (27 April 2011). The prison warden in Bijeljina, Milan Savić, was suspicious about the fact that a prisoner was picked up in the middle of the night and so he called Colonel Milenko Todorović, Chief of Intelligence and Security Department of the Eastern Bosnia Corps, and informed him that Pećanac was refusing to sign for Palić. Milenko Todorović T. 13002–13004 (19 April 2011). *See supra* n. 218. Todorović testified that Savić first called the duty officer in Todorović's Department who then checked with the Main Staff, whether Pećanac was authorised to take over Palić. Even though the handover was confirmed, Savić called Todorović to double-check because Pećanac was refusing to sign the receipt. Milenko Todorović, T. 13003, 13006, 13008 (19 April 2011). According to Todorović, Savić gave Pećanac the phone and Todorović told him that if he wanted to take Palić away he needed to sign for him in the logbook and after that Pećanac signed and took Palić away. Milenko Todorović, T. 13002–13006, 13008 (19 April 2011).

2923 *See* Annex C: Confidential Annex. *See also* Hamdija Torlak, T. 4801–4802 (2 September 2010) (testifying that the latest version of rumours about the final whereabouts and fate of Palić amongst the Bosnian Muslims is that he had been held at several places, first Borike, then Bijeljina and later Rogatica or Han Pijesak where it is presumed that he was killed in early September); Esma Palić, T. 13330 (27 April 2011) (testifying that she obtained information that after Pećanac had picked up Avdo Palić from the prison in Bijelijna in the night of 5 September, he handed him over to "Colonel Jovo Marić, the commander of some air force unit", a man who at the time that Esma Palić received all this information was dead already so he could neither confirm nor deny this allegation. The next thing she knew was that her husband was found in a mass grave).

2924 Ex. P00170, p. 36; Ex. P01940 (confidential); Dušan Janc, T. 1806, 1808–1814 (14 May 2010); Ex. P00181 (confidential); Ex. P00183 (confidential); Ex. P00185 (confidential); Ex. P00191 (confidential); Ex. P00104, p. 12 (map indicating the mass grave at Vragolovi close to Rogatica). With regard to the remains of Avdo Palić, the ICMP obtained a bone sample in 2001 from the Vragolovi grave which was bar-coded as 9100507 and submitted anonymously to the Tuzla laboratory that same year. Subsequently a DNA profile was generated in 2002 which should have been able to effect a DNA match. However due to an unusual combination of human clerical error in sample name entry into an instrument, and an unanticipated software glitch with regard to how data was subsequently output from the instrument, the DNA profile was entered into the ICMP comparison database in an incorrect form which prevented it from being matched. This occasioned a delay in the discovery of the match, which was not identified until 2009 when, under Parsons' direction, the ICMP instituted a full technical review of all previously unmatched DNA profiles from the early periods of the ICMP operation. As a result of this the ICMP

their bodies had fractures caused by projectiles and that their death was violent and was caused by injuries to the head or skull.[2925] The Majority, Judge Nyambe dissenting, finds that Bosnian Serb Forces killed Mehmed Hajrić, Amir Imamović and Avdo Palić after they had held them in detention for many days.

found eight additional new matches as well as the one for Palić. ICMP did not take family reference samples for Palić until 2005 and therefore the matching of his bone profile could not have been made until 2005. In addition, a team of highly regarded international experts performed a full independent review of the cause of the delay of the identification of Palić and found that there was no indication that the errors listed above were inflicted deliberately by the ICMP. It found the system to be by design unbiased and resistant to manipulation and believed that a good-faith effort had been made by the ICMP to provide for a complete accounting of those errors. The expert panel also found that the system has evolved continuously since 2001 and that the current standards employed by the ICMP are highly professional, at an international level of competence and one of the most effective DNA matching systems in the world. Thomas Parsons, T. 10459–10471 (25 February 2011); Ex. D00170 (Comprehensive Independent Review of Technical Processes Related to DNA Processes at the International Commission on Missing Persons). While the Chamber takes note of the human and technical errors that were made by the ICMP with regard to the identification of the mortal remains of Avdo Palić, it considers that none of these errors invalidate the DNA match that was generated in 2009. In the Chamber's view Parsons's testimony, combined with the report of the independent expert panel sufficiently establish that the bone sample from the Vragolovi grave which was bar-coded as 9100507 matches the DNA of Avdo Palić.

[2925] Ex. P00182; Ex. P00184; Ex. P00186; Ex. P00187, p. 4. The others in the grave were also found to have had violent deaths. Dušan Janc, T. 1809 (14 May 2010).

VII. LEGAL FINDINGS

A. General Requirements of Article 3 and Article 5 of the Statute

1. Article 3

(a) Applicable Law

681. Article 3 of the Statute confers jurisdiction over any serious crime against international humanitarian law that is not covered by Articles 2, 4, or 5.[2926] Article 3 constitutes a broad category of crimes,[2927] including murder as a violation of the laws or customs of war as charged in Count 5 of the Indictment.[2928] This charge is based upon Common Article 3 of the 1949 Geneva Conventions ("Common Article 3").[2929]

682. For the application of Article 3, two cumulative preliminary requirements must be satisfied. Namely there must be an armed conflict and a nexus between the conflict and the alleged crime.[2930] An armed conflict "exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State".[2931] It is immaterial whether the conflict is of an international or a non-international nature.[2932]

683. Regarding the required nexus between the alleged crime and the conflict, the Appeals Chamber has held that:

> The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.[2933]

2926 *Kunarac et al.* Appeal Judgement, para. 68; *Tadić* Jurisdiction Decision, para. 91.
2927 *Kunarac et al.* Appeal Judgement, para. 68; *Popović et al.* Trial Judgement, para. 739; *Tadić* Jurisdiction Decision, para. 87.
2928 Indictment, para. 33.
2929 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949; Geneva Convention III, relative to the Treatment of Prisoners of War, 12 August 1949; Geneva Convention IV, relative to the Protection of Civilian Persons in Time of War, 12 August 1949.
2930 *Stakić* Appeal Judgement, para. 342; *Kunarac et al.* Appeal Judgement, para. 55; *Tadić* Jurisdiction Decision, paras. 67–70.
2931 *Tadić* Jurisdiction Decision, para. 70.
2932 *Tadić* Jurisdiction Decision, para. 137. *See, e.g., Đorđević* Trial Judgement, para. 1525; *Popović et al.* Trial Judgement, para. 740.
2933 *Kunarac et al.* Appeal Judgement, para. 58. *See, e.g., Đorđević* Trial Judgement, para. 1527; *Popović et al.* Trial Judgement, para. 741.

The alleged crime thus does not need to occur at a time or place in which fighting actually occurred.[2934] It would be sufficient to conclude that the perpetrator's acts were closely related to the armed conflict if he acted in "furtherance of or under the guise of the armed conflict".[2935]

684. In addition to the preliminary requirements, four conditions set out in the *Tadić* Jurisdiction Decision ("the four *Tadić* conditions") must be met before a crime can be prosecuted under Article 3:

i. the violation must constitute an infringement of a rule of international humanitarian law;

ii. the rule must be customary in nature, or, if it belongs to treaty law, the treaty must be unquestionably binding on the parties at the time of the alleged offence and not in conflict with or derogation from peremptory norms of international law;

iii. the violation must be serious;

iv. the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.[2936]

The Appeals Chamber has held that serious violations of Common Article 3 will, at once, satisfy the four *Tadić* conditions.[2937]

685. As Common Article 3 aims at providing a minimum guarantee to persons in the midst of an armed conflict though not taking any active part in the hostilities,[2938] it also must be established that the victims of the murder were not taking an active part in the hostilities at the time the crime was committed.[2939] Such victims include "members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause".[2940] Furthermore, it must be established that "the perpetrator of a Common Article 3 crime knew or should have been aware that the victim was taking no active part in the hostilities when the crime was committed".[2941]

2934 *Kunarac et al.* Appeal Judgement, para. 57. *See also Stakić* Appeal Judgement, para. 342.
2935 *Kunarac et al.* Appeal Judgement, para. 58. *See also Popović et al.* Trial Judgement, para. 741.
2936 *Tadić* Jurisdiction Decision, para. 94. *See also Kunarac et al.* Appeal Judgement, para. 66.
2937 *Kunarac et al.* Appeal Judgement, para. 68.
2938 *Ibid.*
2939 *Boškoski and Tarčulovski* Appeal Judgement, para. 66; *Čelebići* Appeal Judgement, paras. 420, 423.
2940 Common Article 3(1).
2941 *Boškoski and Tarčulovski* Appeal Judgement, para. 66, referring to *Naletilić and Martinović* Appeal Judgement, paras. 118–121.

(b) Findings

686. Based on the evidence presented in this case, the Chamber is satisfied that, following the declaration of independence of the Republic of BiH, an armed conflict commenced; it extended to Eastern BiH in the spring of 1992 with fighting between the forces of the Republic of BiH and the forces of the RS.[2942] While cease-fires were negotiated in April and May of 1993 and January 1995, none were effectively implemented.[2943] Given the evidence of continuous military efforts and attacks throughout 1995,[2944] the Chamber finds that an armed conflict was ongoing during the period of the Indictment, specifically, 8 March to 1 November 1995. As noted above, it is unnecessary for the Chamber to make a distinction between an internal or international conflict for the purposes of Article 3.[2945]

687. Additionally, the Chamber has found that thousands of Bosnian Muslims were killed by Bosnian Serb Forces in the indicted incidents[2946] and the evidence shows that these victims were killed in actions directly connected to the ongoing conflict[2947] thus satisfying the requisite nexus element of Article 3. The Chamber has found that these victims were not taking part in active hostilities at the time of their deaths and that those responsible knew this.[2948] These acts of killing constitute serious violations of Common Article 3.[2949] Thus, the Chamber is satisfied that the four *Tadić* conditions are met.[2950]

688. Therefore, the Chamber finds that the statutory elements for crimes charged under Article 3 have been met.

2942 *See supra* paras. 159, 161.
2943 *See supra* paras. 176–180, 183–185.
2944 *See supra* Chapter IV. B. 4., Chapter V., Chapter VI., Chapter V., Chapter VI.
2945 *See supra* para. 682.
2946 *See supra* paras. 566–597.
2947 *See supra* Chapter V., Chapter VI.
2948 *See supra* Chapter V., Chapter VI. B. 4., Chapter VI. B. 5., Chapter VI. B. 6.
2949 *See supra* para. 681, n. 2929. Common Article 3(1)(a) states:

> Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.

2950 *See supra* para. 684.

2. Article 5

(a) Applicable Law

689. The Indictment charges the Accused with five counts of crimes against humanity pursuant to Article 5, specifically, extermination (Count 3), murder (Count 4), persecution (Count 6), forcible transfer constituting inhumane acts (Count 7), and deportation (Count 8).

690. Article 5 gives the Tribunal jurisdiction to prosecute persons responsible for the crimes enumerated therein "when committed in armed conflict, whether international or internal in character, and directed against any civilian population".

691. The requirement that the crimes be committed in armed conflict is a jurisdictional prerequisite, specific to the Tribunal,[2951] which requires proof that there was an armed conflict and that there is a nexus between the alleged crime and the armed conflict.[2952] The test for the existence of an armed conflict is the same as that used in the context of Article 3.[2953] An armed conflict exists where there is either a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.[2954] A nexus is established where the acts of the accused are linked geographically as well as temporally to the armed conflict.[2955]

692. Additionally, crimes against humanity require the establishment of five legal elements: (1) there must be an attack; (2) the attack must be directed against a civilian population; (3) the attack must be widespread or systematic; (4) the acts of the accused must be part of the attack; and (5) the accused must know that his or her acts constitute part of the widespread or systematic attack directed against a civilian population.[2956]

2951 *Tadić* Jurisdiction Decision, para. 141 (the Appeals Chamber noted that it is a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict and that, by including this requirement in Article 5, the United Nations Security Council may have defined the crime more narrowly than necessary under customary international law). *See also Kunarac et al.* Appeal Judgement, para. 83.

2952 *Kunarac et al.* Appeal Judgement, para. 83; *Tadić* Appeal Judgement, para. 239. *See also Popović et al.* Trial Judgement, para. 750.

2953 *Milutinović et al.* Trial Judgement, Vol. I, para. 141.

2954 *Tadić* Jurisdiction Decision, para. 70; *Gotovina et al.* Trial Judgement, para. 1674; *Milutinović et al.* Trial Judgement, Vol. I, para. 141.

2955 *Kunarac et al.* Appeal Judgement, para. 83; *Tadić* Appeal Judgement, paras. 249, 251; *Perišić* Trial Judgement, para. 80; *Gotovina et al.* Trial Judgement, para. 1700; *Đorđević* Trial Judgement, para. 1587; *Popović et al.* Trial Judgement, para. 750.

2956 *Kunarac et al.* Appeal Judgement, para. 85; *Tadić* Appeal Judgement, paras. 248, 251; *Popović et al.* Trial Judgement, para. 751.

(i) There Must Be an Attack

693. The concepts of "attack on a civilian population" and "armed conflict" are distinct.[2957] In the context of a crime against humanity, an "attack" is not limited to the use of force, but also encompasses any mistreatment of the civilian population.[2958] The attack need not be part of the armed conflict; rather, it may precede, outlast, or continue during the armed conflict.[2959] The jurisprudence of the Tribunal is clear that whether the opposing party in the conflict performed a similar attack is irrelevant.[2960]

(ii) The Attack Must Be Directed Against a Civilian Population

694. It is a requirement that the attack be directed at a civilian population, such that it is the primary target of the attack.[2961] The Appeals Chamber has held that in assessing whether the civilian population is the primary target of an attack, relevant factors include, *inter alia*: "the means and method used in the course of the attack, the number of victims, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war".[2962]

695. The Appeals Chamber has held that the definition of civilian, as found under Article 50 of Additional Protocol I to the Geneva Conventions,[2963] reflects customary international law and is thus relevant to considerations of crimes against humanity.[2964] The applicable definition of civilian, then, is any person who does not fall under the specifically defined categories of Article 4(A) of Geneva Convention III[2965] or Article 43 of Additional Protocol I.[2966] Read together, these Articles

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2957 *Kunarac et al.* Appeal Judgement, para. 86; *Tadić* Appeal Judgement, para. 251.

2958 *Kunarac et al.* Appeal Judgement, para. 86. *See also Perišić* Trial Judgement, para. 82; *Popović et al.* Trial Judgement, paras. 752; *Gotovina et al.* Trial Judgement, para. 1702; *Đorđević* Trial Judgement, para. 1589.

2959 *Kunarac et al.* Appeal Judgement, para. 86. *See also Popović et al.* Trial Judgement, para. 752.

2960 *Kunarac et al.* Appeal Judgement, para. 87; *Kupreškić et al.* Trial Judgement, para. 765.

2961 *Kunarac et al.* Appeal Judgement, paras. 91–92.

2962 *Mrkšić and Šljivančanin* Appeal Judgement, para. 30; *Kunarac et al.* Appeal Judgement, para. 91.

2963 Article 50 of Additional Protocol I states:

(1) A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A(1), (2), (3), and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

(2) The civilian population comprises all persons who are civilians.

(3) The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

2964 *Martić* Appeal Judgement, para. 292 (quoting *Blaškić* Appeal Judgement, para. 110).

2965 Article 4(A) of Geneva Convention III provides that prisoners of war, in the sense of the Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corpsforming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own

establish that members of armed forces and members of militias or volunteer corps forming part of such armed forces are "combatants" and cannot claim civilian status;[2967] nor can a member of an armed organisation be accorded civilian status merely because he or she is not armed or in combat at the relevant time.[2968] Finally, it is settled that persons *hors de combat* are not considered civilians.[2969] "In case of doubt whether a person is a civilian, that person shall be considered to be a civilian."[2970]

696. A population may qualify as "civilian" as long as it is predominantly civilian.[2971] The use of the term "population" in this context does not mean that the entire population of the geographical entity in which the attack took place must have been subjected to the attack.[2972] Rather, it must be demonstrated that a sufficient number of individuals were targeted during the attack or that they were targeted in a manner that satisfies the Chamber that the attack was directed against a civilian population as opposed to "against a limited and randomly selected number of individuals".[2973] Further, the presence of those who do not meet the definition of civilian within the population does not deprive the entire population of its civilian character.[2974]

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territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed or distinctive sign recognizable at the distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining power [...]

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had the time to form themselves into regular armed unit, provided they carry arms openly and respect the laws and customs of war.

2966 Article 43 of Additional Protocol I provides:

(1) The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.

(2) Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

(3) Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

2967 *Kordić and Čerkez* Appeal Judgement, para. 50. *See also Blaškić* Appeal Judgement, para 113.

2968 *Blaškić* Appeal Judgement, para 114.

2969 *Martić* Appeal Judgement, para. 302; *Galić* Appeal Judgement, para. 144.

2970 *See supra* n. 2963.

2971 *Đorđević* Trial Judgement, para. 1591; *Popović et al.* Trial Judgement, para. 754; *Tadić* Trial Judgement, para. 638.

2972 *Kunarac et al.* Appeal Judgement, para. 90, referring to *Kunarac et al.* Trial Judgement, para. 424.

2973 *Kunarac et al.* Appeal Judgement, paras. 90–91. *See also Mrkšić and Šljivančanin* Appeal Judgement, para. 30; *Stakić* Appeal Judgement, para. 247; *Kordić and Čerkez* Appeal Judgement, para. 95; *Blaškić* Appeal Judgement, para. 105.

2974 *Mrkšić and Šljivančanin* Appeal Judgement, para. 31; *Blaškić* Appeal Judgement, para 113.

697. It is neither a requirement nor an element of a crime against humanity that the individual victims of the underlying crimes be civilians.[2975] The Appeals Chamber has held that "[u]nder Article 5 of the Statute, a person *hors de combat* may thus be the victim of an act amounting to a crime against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population".[2976] The status of the victims, therefore, may be relevant to establishing whether the civilian population was the primary target of the attack.[2977]

(iii) The Attack Must Be Widespread or Systematic

698. The requirement that the attack in which the alleged crime(s) occurred be widespread or systematic is disjunctive.[2978] The term "widespread" refers to the large-scale nature of the attack and the number of victims.[2979] The term "systematic" refers to the organised nature of the acts associated with the attack and the improbability of random occurrence.[2980] Proof of the existence of a plan or policy behind the attack may serve as evidence that the attack was directed against a civilian population or that it was widespread or systematic, but does not constitute a legal element of Article 5.[2981] A single act or limited number of acts can qualify as a crime against humanity provided the act or acts are not isolated or random and that all other elements are met.[2982]

(iv) The Acts of the Accused Must Be Part of the Attack

699. For an alleged crime to qualify as a crime against humanity, the acts of the accused must form part of the widespread or systematic attack against the civilian population.[2983] This is commonly referred to in the jurisprudence as a nexus requirement.[2984] However, the acts of the accused need not be carried out in the midst of the attack.[2985] A nexus may exist in circumstances where a crime is not entirely temporally and geographically connected to the attack.[2986] A crime found to be an isolated act cannot be considered a crime against humanity.[2987] According to the

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2975 *Mrkšić and Šljivančanin* Appeal Judgement, para. 32; *Martić* Appeal Judgement, para. 307.
2976 *Mrkšić and Šljivančanin* Appeal Judgement, para. 36, quoting *Martić* Appeal Judgement, para. 313.
2977 *Mrkšić and Šljivančanin* Appeal Judgement, para. 30.
2978 *Kunarac et al.* Appeal Judgement, para. 93; *Đorđević* Trial Judgement, para. 1590; *Tadić* Trial Judgement, para. 648.
2979 *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94; *Tadić* Trial Judgement, para. 648.
2980 *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94.
2981 *Kunarac et al.* Appeal Judgement, paras. 98, 101. *See also Blaškić* Appeal Judgement, para. 120.
2982 *Kunarac et al.* Appeal Judgement, para. 96. *See also Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101.
2983 *Kunarac et al.* Appeal Judgement, paras. 99–100. *See also Mrkšić and Šljivančanin* Appeal Judgement, para. 41.
2984 *Kunarac et al.* Appeal Judgement, paras. 99, 101; *Popović et al* Trial Judgement, para. 757.
2985 *Kunarac et al.* Appeal Judgement, para. 100. *See also Mrkšić and Šljivančanin* Appeal Judgement, para. 41.
2986 *Kunarac et al.* Appeal Judgement, paras. 99, 101. *See also Mrkšić and Šljivančanin* Appeal Judgement, para. 41.
2987 *Kupreškić et al.* Trial Judgement, para. 550.

Appeals Chamber, "a crime would be regarded as an 'isolated act' when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack".[2988] The assessment of whether the acts of the accused formed part of the attack must be conducted on a case-by-case basis.[2989]

(v) *Mens Rea* Requirement: The Accused Must Know that His Acts Constitute Part of the Widespread or Systematic Attack Directed Against a Civilian Population

700. There are two components to the *mens rea* requirement of a crime against humanity. The accused must have the requisite intent to commit the underlying crime and have the knowledge that there was an attack against the civilian population and his acts comprised part of that attack.[2990] The motives of the accused are irrelevant.[2991] A crime against humanity may be committed for purely personal reasons[2992] and it is not necessary for the accused to share the purpose or goal behind the attack.[2993] It is irrelevant whether the accused intended his acts to be directed against the targeted population as opposed to being directed merely against his victim.[2994] It is the attack, not the acts of the accused, which must be directed against the target population and the accused need only know that his acts are part thereof.[2995] Evidence that the accused committed the acts for purely personal reasons could be indicative of a rebuttable presumption that he was not aware that his acts were part of the attack.[2996]

(b) Findings

701. On the basis of the factual findings of this Judgement,[2997] the Chamber is satisfied that there was an attack during the period relevant to the Indictment which bore a sufficient nexus to the ongoing armed conflict.[2998] This single attack encompassed several interrelated components,[2999] namely the military actions against both enclaves that preceded their fall, the restrictions on humanitarian aid, the removal of women, children, and elderly, and the killing of the men.

2988 *Kunarac et al.* Appeal Judgement, para. 100; *Tadić* Trial Judgement, para. 649; *Mrkšić and Šljivančanin* Rule 61 Decision, para. 30.
2989 *Mrkšić and Šljivančanin* Appeal Judgement, para. 41.
2990 *Kunarac et al.* Appeal Judgement, para. 102. *See also Kordić and Čerkez* Appeal Judgement, para. 100; *Blaškić* Appeal Judgement, para. 124; *Tadić* Appeal Judgement, para. 248.
2991 *Kordić and Čerkez* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124; *Kunarac et al.* Appeal Judgement, para. 103; *Tadić* Appeal Judgement, paras. 250–252.
2992 *Kordić and Čerkez* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124; *Kunarac et al.* Appeal Judgement, para. 103; *Tadić* Appeal Judgement, paras. 248, 252.
2993 *Kordić and Čerkez* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124; *Kunarac et al.* Appeal Judgement, para. 103.
2994 *Ibid.*
2995 *Ibid.*
2996 *Ibid.*
2997 *See supra* Chapter IV., Chapter V., Chapter VI.
2998 *See supra*, para. 686.
2999 *Kunarac et al.* Trial Judgement, paras. 570–578 (giving an account of an attack consisting of several elements).

702. The Majority, Judge Nyambe dissenting, finds that, as early as 1992, significant figures in the RS leadership were intent on segregating the ethnic populations of BiH.[3000] Over the course of the next three years, this goal developed into a series of actions set forth to eradicate the entirety of the Bosnian Muslim population from the eastern enclaves in BiH.[3001]

703. By early 1993, 50,000 to 60,000 Bosnian Muslims faced siege conditions in the Srebrenica enclave at the hands of the VRS.[3002] In view of this situation, in April 1993, the United Nations Security Council declared the Srebrenica enclave as a "safe area" to be "free from any armed attack or any other hostile act".[3003] In May 1993, the United Nations identified a "need of safety" for other areas;[3004] thus, similar protections were granted to the Žepa and Goražde enclaves. These designations as "safe areas" were made in advance of the demilitarisation agreements and were not contingent upon military disarmament.[3005] Despite violations by both warring parties,[3006] the "safe area" designations persisted continuously up until and through the period of the Indictment.

704. The Accused argues that ABiH violations of the demilitarisation agreements constituted a material breach within the meaning of Article 60 of Additional Protocol I and, as a result, the enclaves lost their protections as demilitarised zones.[3007] As such, he submits, the VRS was relieved of its duty to treat the enclaves as safe areas and the VRS "had the right to attack it".[3008] However, the UN declarations of "safe areas" were not contingent upon the parties adhering to demilitarisation; the safe areas were made pursuant to Chapter VII of the UN Charter[3009] and designated prior to and independent of the subsequent demilitarisation agreements of the VRS and ABiH.[3010] That the ABiH did not honour the subsequent cease-fire agreements or that some military targets may have existed in the enclaves could not provide a basis for the VRS to attack what had been designated by the UN as "safe areas". Further, the execution of Bosnian Serb Forces manoeuvres was bereft of any actual precautions to ensure the safety of the civilian population, which remained a duty under international law and Article 60(7) of Additional Protocol I.[3011]

3000 *See supra* paras. 162–163.
3001 *See supra* paras. 164–165, 174–175, 180–182.
3002 *See supra* para. 174.
3003 *See supra* para. 176.
3004 Ex. P02135, p. 1.
3005 *See supra* paras. 176–179. *See also*, Ex. D00122, pp. 18–20.
3006 *See supra* paras. 180–182, 184–192, 205–212.
3007 Accused Closing Argument, T. 19488–19489 (22 August 2012). *See also* Accused Closing Argument, T. 19489–19497 (22 August 2012); Accused Final Brief, para. 410.
3008 Accused Closing Argument, T. 19490 (22 August 2012).
3009 Ex. P02134, p. 2; Ex. P02135, p. 2.
3010 *See supra* paras. 176–179, 183.
3011 Article 60(7) of Additional Protocol I provides:

> If one of the Parties to the conflict commits a material breach of the provisions of paragraphs 3 or 6, the other Party shall be released from its obligations under the agreement conferring upon the zone the status of demilitarized zone. In such an eventuality, the zone loses its status *but shall continue to enjoy*

705. In fact, Directive 7 specifically targeted these protected civilian populations with a call to create "an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa".[3012] Given the VRS's detailed knowledge about the situation in the enclaves,[3013] the Majority finds that this specific language of Directive 7—"the inhabitants of Srebrenica and Žepa"—would necessarily refer to a predominantly civilian Bosnian Muslim population, the large part of whom had been driven further into the narrowing enclaves by previous military actions of the VRS.[3014] In the months that followed the issuance of Directive 7, VRS military actions were directed at the Srebrenica and Žepa enclaves.[3015] VRS retaliations—against ABiH actions and NATO bombing—targeted Bosnian Muslim civilians.[3016] The VRS additionally targeted UNPROFOR units stationed in the enclaves[3017]—the peacekeeping units that were intended to assist the civilian population.[3018] Convoys of humanitarian aid and UNPROFOR supplies were heavily restricted with the eventual and expected result of a beleaguered population and an ineffective peacekeeping force.[3019]

706. The Accused asserts that the Bosnian Serb Forces' assaults on Srebrenica and Žepa, including the Krivaja 95 attack, were the only solution for the VRS to counter the ABiH forces' operations undertaken to link up the territory of the enclaves; specifically "[i]f the VRS had not carried out an attack against Srebrenica and Žepa, in the following months it would have faced offensive operations at several fronts".[3020] In support of this argument, the Accused refers to Exhibit P01202 in which Živanović transmitted orders for a military reaction to reports of ABiH plans to link up the enclaves.[3021] While the evidence in this case does indicate that ABiH units were located in the enclaves at the time of these attacks,[3022] this does not provide a justification for the attacks of the Bosnian Serb Forces against populations known to be of a predominantly civilian character.[3023] As an example, Živanović's order, Exhibit P01202, directly called upon the VRS to carry out an offensive "to create conditions for the elimination of the enclaves" in line with Directive 7;[3024] realisation of such goal would necessarily affect the thousands of Bosnian Muslim civilians living

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the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict (emphasis added).

3012 *See supra* para. 188.
3013 *See supra* para. 195.
3014 *See supra* paras. 161, 174. For further discussion regarding Directives 7 and 7/1, see *infra*, paras. 1010–1015.
3015 *See supra* paras. 205–212.
3016 *See supra* paras. 207–208, 210–212.
3017 *See supra* paras. 206, 209–210, 212.
3018 *See supra* para. 166.
3019 *See supra* paras. 196–204.
3020 Accused Closing Argument, T. 19488–19489 (22 August 2012). *See also* Accused Closing Argument, T. 19489–19497 (22 August 2012); Accused Final Brief, para. 410.
3021 Accused Closing Argument, T. 19490 (22 August 2012).
3022 *See supra* paras. 180, 182, 184, 207, 210, 224, 230, 233.
3023 *See, e.g., supra* paras. 207–208, 210–212.
3024 *See supra*, para. 217.

in those enclaves. Therefore, instead of specifically targeting the ABiH in actions, the Bosnian Serb Forces repeatedly acted against the whole of the Bosnian Muslim population in the Srebrenica and Žepa enclaves.[3025]

707. From 2 July 1995, Krivaja 95 set into motion a series of military actions to create the conditions for the elimination of the Srebrenica and Žepa enclaves known to be populated with civilians.[3026] The VRS awareness of a civilian component of the population is clear in Krivaja 95 orders to comply with the Geneva Conventions;[3027] however, the heavy shelling into the densely populated safe area of Srebrenica that followed was indiscriminate and resulted in several civilian deaths.[3028] The attacks that ensued from 7 to 10 July drove the Bosnian Muslim civilian population—women, children, and elderly—to seek shelter first in Srebrenica town and then in Potočari.[3029] When the Bosnian Muslims congregated in and around the UN compound in Potočari on 11 July 1995,[3030] the Bosnian Serb Forces were fully aware of their presence and the precarious situation.[3031] Yet the Bosnian Serb Forces pressed on until the women, children, and elderly who had gathered in Potočari were left no choice but to board buses that took them to Kladanj.[3032]

708. The Bosnian Muslim males were also targeted with little to no effort by the Bosnian Serb Forces to distinguish between civilians and combatants. In Potočari, the male population, some as young as 12 and some of advanced age, were separated out of the crowds and sent to detention centres;[3033] at least one was killed while still in Potočari.[3034] Many more males were taken as prisoners from a column that had set forth from Šušnjari.[3035] These individuals suffered a swift series of systematic killings that played out in coordinated action by the Bosnian Serb Forces.[3036] The boys and many of the men taken from Potočari or the column were civilians and had never been engaged in armed combat. The remainder of the men were *hors de combat* upon capture or surrender from the column. While the Accused submits that persons *hors de combat* cannot be victims of crimes against humanity,[3037] this position is in contravention of the clear jurisprudence set forth in the *Martić* Appeal Judgement and reiterated by the *Mrkšić and Šljivančanin* Appeals

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3025 *See, e.g., supra* paras. 207–208, 210–212.
3026 *See supra* paras. 215–218.
3027 *See supra* para. 217.
3028 *See supra* para. 220.
3029 *See supra* paras. 221, 233, 237–238.
3030 *See supra* para. 241.
3031 *See supra* paras. 245–249, 252–254.
3032 *See supra* paras. 262–265, 275–278, 281–284, 304.
3033 *See supra* paras. 282, 286.
3034 *See supra* para. 309.
3035 *See supra* paras. 315–320.
3036 *See supra* Chapter V.
3037 Accused Final Brief, para. 73.

Chamber.[3038] So long as the crimes are part of a widespread or systematic attack on a civilian population, Article 5 does not require proof that the actual victims were civilians. In the present case, the murder of these men formed an intrinsic part of the attack directed at the Bosnian Muslim population of the Srebrenica and Žepa enclaves.

709. Throughout July, the Bosnian Serb Forces continued their attack with numerous military actions against the Žepa enclave terrorising the Bosnian Muslim population.[3039] Succumbing to these assaults, from 25 to 27 July 1995, a group of nearly 4,400 comprised of mostly women, children, and elderly was methodically removed from Žepa on buses arranged by the VRS; at the same time, the men fled in fear for their lives.[3040]

710. On the basis of these considerations, the Chamber is satisfied that there was an attack within the meaning of Article 5 that was primarily directed at the Bosnian Muslim civilian populations of the Srebrenica and Žepa enclaves. The attack was widespread—including thousands of Bosnian Muslims killed over numerous locations[3041] and tens of thousands driven out of the area.[3042] As the attack was committed through coordinated actions of the Bosnian Serb Forces in a short period of time, mostly in July 1995,[3043] the Chamber also finds that the established crimes were systematic. Given these findings, the Chamber is satisfied that the first three elements for Article 5 crimes against humanity—an attack that is widespread or systematic and directed at a civilian population—are met.

711. The latter two elements necessary to a finding of Article 5 crimes—the nexus between the Accused's actions and the attack and knowledge on the part of the Accused of the crimes within the context of the attack—are addressed in detail in the section of this Judgement relating to the Accused's individual criminal responsibility.[3044]

B. Murder

1. Charges

712. The Indictment charges the Accused with murder, both as a violation of the laws or customs of war and a crime against humanity pursuant to Articles 3 and 5(a) of the Statute by and through

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3038 *See supra* para. 697, n. 2976.
3039 *See supra* paras. 600, 612, 614–615, 625.
3040 *See supra* paras. 639–653, 672–676.
3041 *See supra* paras. 566–597.
3042 *See supra* paras. 304, 649.
3043 *See supra* Chapter IV., Chapter V., Chapter VI.
3044 *See infra* paras. 1177–1179.

the means identified in paragraphs 21, 22 and 23.1.[3045] The allegations against the Accused comprise the large-scale and systematic killings,[3046] as well as the "opportunistic" killings of Bosnian Muslim males from Srebrenica; [3047] and the targeted killings of three Bosnian Muslim leaders in Žepa.[3048]

2. Applicable Law

713. The definition of murder, as it emerges from the jurisprudence, is made up of the following three elements: the death of the victim, the causation of the death of the victim by the accused and the *mens rea*.[3049]

714. The elements of murder are the same, whether charged under Article 3 or 5(a), with the exception that the respective general requirements for each of these provisions must be met.[3050]

715. The *actus reus* for murder is the death of the victim which results from an act or omission of the accused, or one or more persons for whom the accused is criminally responsible.[3051] Murder may be established where the conduct of the accused or the person(s) for whom the accused is criminally responsible contributed substantially to the death of the victim.[3052] The Prosecution need not prove that the body of a person has been recovered in order to establish the death of the victim.[3053] The death of a victim may be established by circumstantial evidence, provided that the only reasonable inference that can be drawn from such evidence is that the victim is dead.[3054]

716. The *mens rea* for murder requires the intent of the accused or of the person(s) for whom he is criminally responsible either to kill the victim or to wilfully cause serious bodily harm with the reasonable knowledge that it is likely to lead to death.[3055] It has been found that negligence and gross negligence do not form part of such indirect intent.[3056]

3045 Indictment, p. 20.
3046 Indictment, para. 21.
3047 Indictment, para. 22.
3048 Indictment, para. 23.1.
3049 *Popović et al.* Trial Judgement, para. 787. *See also Kvočka et al.* Appeal Judgement, para. 261; *Kordić and Čerkez* Appeal Judgement, para. 37.
3050 *Popović et al.* Trial Judgement, para. 787; *Milutinović et al.* Trial Judgement, Vol. I, para. 136.
3051 *Kvočka et al.* Appeal Judgement, para. 261; *Milošević* Appeal Judgement, para. 108; *Popović et al.* Trial Judgement, para. 787.
3052 *Brđanin* Trial Judgement, paras. 380–382; *Čelebići* Trial Judgement, para. 424; *Milutinović et al.* Trial Judgement, Vol. I, para. 137.
3053 *Kvočka et al.* Appeal Judgement, para. 260; *Popović et al.* Trial Judgement, para. 789; *Lukić and Lukić* Trial Judgement, para. 904; *Đorđević* Trial Judgement para. 1708.
3054 *Kvočka et al.* Appeal Judgement, para. 260; *Popović et al.* Trial Judgement, para. 789; *Lukić and Lukić* Trial Judgement, para. 904.
3055 *Kordić and Čerkez* Appeal Judgement para. 36; *Čelebići* Appeal Judgement, para. 422; *Perišić* Trial Judgement, para. 102. *See also Đorđević* Trial Judgement, para. 1708.
3056 *Đorđević* Trial Judgement para. 1708.

3. Findings

717. The Chamber will now consider its previous findings with regard to the specific allegations of murder as charged in the Indictment.

718. The Chamber has already found that after the fall of Srebrenica at least 4,970 Bosnian Muslims were killed by Bosnian Serb Forces in the specific sets of circumstances referred to in paragraphs 21–22 of the Indictment.[3057] The Chamber, Judge Nyambe dissenting, has also found that after the fall of Žepa, Bosnian Serb Forces killed Mehmed Hajrić, Amir Imamović, and Avdo Palić, as alleged in paragraph 23.1 of the Indictment.[3058] The Chamber now turns to whether or not these killings by Bosnian Serb Forces constitute the crime of murder.

719. The Chamber notes that the 4,970 Srebrenica-related victims and the three Žepa-related victims were found to have been in the custody of the Bosnian Serb Forces for a significant amount of time before they were killed.

720. It is only with the killings of one of the Bosnian Muslims questioned at the Bratunac Brigade Headquarters,[3059] the ten Bosnian Muslims taken from Milići Hospital,[3060] and the four survivors of Branjevo Military Farm,[3061] that there is no direct evidence of the circumstances of the killing. For these instances, the Chamber infers from the context and events preceding those killings that they were also intentional. In all the other instances there is direct evidence of the circumstances of the killings, whether based on eye-witness testimony or forensic evidence, and the only reasonable inference from such evidence is that these killings were intentional.

721. In light of the circumstances, context and events preceding the killings, the Majority, Judge Nyambe dissenting, concludes, therefore, that the Bosnian Serb Forces murdered at least 4,970 Bosnian Muslims after the fall of Srebrenica and three Bosnian Muslims after the fall of Žepa. The liability of the Accused for these crimes is discussed in Chapter VIII.

C. Extermination

1. Charges

722. The Indictment charges the Accused with extermination as a crime against humanity, punishable under Article 5(b) of the Statute by his involvement in the murders described in detail in

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3057 *See supra* paras. 570–571. *See* Indictment, paras. 21–22.
3058 *See supra* para. 680. *See* Indictment, para. 23.1.
3059 *See supra* paras. 342–344.
3060 *See supra* paras. 528–533.
3061 *See supra* paras. 539–541.

paragraphs 21, 22 and 23.1.[3062] The allegations against the Accused encompass the large-scale and systematic killings of Bosnian Muslim men and boys from Srebrenica;[3063] the "opportunistic" killings of Bosnian Muslim men from Srebrenica,[3064] and the targeted killings of three Bosnian Muslim leaders from Žepa.[3065]

2. Applicable Law

723. Extermination can be defined in terms of its *actus reus* and *mens rea* as the act of killing on a large scale together with the intention to kill on a large scale or to systematically subject a large number of people to conditions of living that would lead to their deaths.[3066]

724. The crime of extermination shares core elements with the crime of murder.[3067] It is, however, distinguishable from murder because it is the act of killing on a large scale.[3068] The *actus reus* of extermination consists of any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals.[3069] The expression "on a large scale" does not imply a numerical minimum number of victims.[3070] It is not necessary that the victims of extermination be precisely identified by name; it is sufficient that mass killings occurred.[3071] In the crime of extermination, there is no requirement to establish that there was a "vast scheme of collective murder" or knowledge of such a scheme.[3072]

725. The requirement of massiveness must be determined on a case-by-case basis in light of the proven criminal conduct and all relevant factors.[3073] Extermination may be established "on an accumulation of separate and unrelated incidents, meaning on an aggregate basis."[3074] Another factor is the density of the population in the respective area. The *Lukić and Lukić* Trial Chamber stated that this means that "while there may be a higher threshold for a finding of extermination in a

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3062 Indictment, p. 19.
3063 Indictment, para. 21.
3064 Indictment, para. 22.
3065 Indictment, para. 23.1.
3066 *Stakić* Appeal Judgement paras. 259–260; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 522.
3067 *Perišić* Trial Judgement, para. 106; *Popović et al.* Trial Judgement, para. 799; *Krajišnik* Trial Judgement, para. 716; *Blagojević and Jokić* Trial Judgement, para. 571. *See also Sesay et al.* Trial Judgement, para. 130.
3068 *Stakić* Appeal Judgement, paras. 259–260; *Seromba* Appeal Judgement, para. 189; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516.
3069 *Blagojević and Jokić* Trial Judgement, para. 573; *Seromba* Appeal Judgement, para. 189. *See also Setako* Trial Judgement, para. 480.
3070 *Perišić* Trial Judgement, para. 107; *Stakić* Appeal Judgement, para. 260; *Rukundo* Appeal Judgement, para. 185; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516.
3071 *Stakić* Appeal Judgement, para. 259 n. 552; *Rukundo* Appeal Judgement, paras. 185–186; *Ntakirutimana and Ntakirutimana* Appeal Judgement, paras. 521–522; *Martic* Trial Judgement, para. 64.
3072 *Stakić* Appeal Judgement, paras. 258–259; *Perišić* Trial Judgement, para. 107. *See also Duch* Trial Judgement, para. 337.
3073 *Perišić* Trial Judgement, para. 107; *Popović et al.* Trial Judgement, para. 800; *Blagojević and Jokić* Trial Judgement, para. 573; *Stakić* Trial Judgement, para. 640. *See also Duch* Trial Judgement, para. 336.
3074 *Brdanin* Trial Judgement, para. 391; *Martić* Trial Judgement, para. 63.

densely-populated area, it would not be inappropriate to find extermination in a less densely-populated area on the basis of a lower threshold, that is, fewer victims."[3075]

726. The *mens rea* for extermination requires the intent of the accused or one or more persons for whom the accused is criminally responsible, by his acts or omissions, either to kill on a massive scale, or systematically subject a large number of people to conditions of living that would lead to their deaths.[3076] As reflected in the *actus reus*, the *mens rea* of extermination does not require the intent to kill a minimum number of victims.[3077] Furthermore, unlike the crime of genocide, the accused or the person(s) for whom the accused is criminally responsible need not have intended to destroy the group or part of the group to which the victims belong.[3078]

3. Findings

727. The Majority, Judge Nyambe dissenting, has found that the Bosnian Serb Forces murdered at least 4,970 Bosnian Muslims after the fall of Srebrenica in the specific sets of circumstances referred to in paragraphs 21–22 of the Indictment and three Bosnian Muslims after the fall of Žepa, as alleged in paragraph 23.1 of the Indictment.[3079] The Chamber notes that the great majority of these victims were Bosnian Muslim men and boys, comprising a significant proportion of the Bosnian Muslim population in and around Srebrenica.

728. The murders of Bosnian Muslim males separated at Potočari and captured from the column took place in an organised, coordinated manner over a short period of time: the first murders took place in Potočari, near Tišća and in the Bratunac area on 13 and 14 July;[3080] large numbers of prisoners were taken from Potočari and the Bratunac–Konjević Polje–Milići road to Bratunac on 12 and 13 July and from there to sites in the Zvornik area, where between 13 and 16 July Bosnian Serb Forces murdered over four thousand Bosnian Muslim males at five sites in comparable circumstances;[3081] and finally for several weeks after 16 July murders of Bosnian Muslims captured from the column continued in Eastern BiH.[3082] At some point after the middle of August, three

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3075 *Lukić and Lukić* Trial Judgement, para. 938. In contrast, Judge Van Den Wyngaert dissented and opined that the "sheer scale of killings continues to be the most relevant factor in determining whether a mass killing incident has reached the "required threshold of massiveness". *See Lukić and Lukić* Trial Judgement, para. 1117.

3076 *Stakić* Appeal Judgement paras. 259–260; *Popović et al.* Trial Judgement, para. 801; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 522.

3077 *Stakić* Appeal Judgement, para. 260; *Popović et al.* Trial Judgement, para. 801; *Krajišnik* Trial Judgement, para. 716.

3078 *Popović et al.* Trial Judgement, para. 801; *Vasiljević* Trial Judgement, para. 227.

3079 *See supra* para. 721.

3080 *See supra* paras. 309–314, 342–381, 389–404.

3081 *See supra* paras. 413–508. Bosnian Serb Forces murdered at least 830 Bosnian Muslims at Grbavci School on 14 July, 809 Bosnian Muslims at the Petkovci site on 15 July, 761 at the Kozluk site on 15 July and 1,656 at the Branjevo Military Farm and Pilica Cultural Centre sites on 16 July.

3082 *See supra* paras. 520–565.

prominent Bosnian Muslims were murdered in circumstances that showed that they had been targeted because of the leadership positions they had occupied in the Žepa enclave before it fell.[3083]

729. The only reasonable conclusion the Chamber can reach on the basis of the evidence is that there was a single deliberate, organised, large-scale operation to murder Bosnian Muslim males. Mass killing occurred and accordingly the *actus reus* requirement for extermination has been met. In view of the character of the murder operation as a unified, integrated whole, the intention to kill on a massive scale satisfying the *mens rea* requirement is also present. The Chamber therefore finds that the crime of extermination was committed. The liability of the Accused for these crimes is discussed in Chapter VIII.

D. Genocide

1. Charges

730. The Indictment charges the Accused, pursuant to Article 4(3)(a) of the Statute, with genocide with the intent to destroy a part of the Bosnian Muslim people as a national, ethnical, or religious group; that part being the Bosnian Muslim population of Eastern BiH and in particular, the enclaves of Srebrenica, Žepa and Goražde.[3084] Specifically, the Indictment identifies acts of murder by summary execution including planned, opportunistic, and foreseeable targeted summary executions;[3085] and causing serious bodily or mental harm to female and male members of the Bosnian Muslim populations of Srebrenica and Žepa by, including but not limited to separating the able-bodied men from their families, forcibly moving the population from their homes, and murdering able-bodied men.[3086]

731. The Indictment further charges the Accused with the destruction of the women and children, alleging that through their forcible transfer from Srebrenica and Žepa, the separation of men in Potočari and the execution of the men from Srebrenica, the Accused had knowledge of conditions that were created which would contribute to the destruction of the entire Muslim population of Eastern BiH, including but not limited to the failure of the population to live and reproduce normally.[3087]

3083 *See supra* paras. 654–680, 718–721.
3084 Indictment, para. 10.
3085 Indictment, para. 10(a).
3086 Indictment, para. 10(b).
3087 Indictment, para. 24.

732. As such, from the list of underlying acts referred to in Article 4(2), the Indictment charges the Accused with acts contained within Articles 4(2)(a),[3088] (b),[3089] (c)[3090] and (d)[3091].

2. Applicable Law

733. The definition of the crime of genocide under Articles 4(2) and (3) mirrors the definition of genocide in Articles II and III of the Genocide Convention. These provisions of the Genocide Convention are widely accepted as customary international law rising to the level of *jus cogens*;[3092] and genocide as defined in the Statute, was a punishable offence under customary international law at the time of the acts alleged in the Indictment.[3093]

734. Article 4(2) lists the following underlying acts which constitute genocide when committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

(a) killing members of the group;
(b) causing serious bodily or mental harm to members of the group;
(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) imposing measures intended to prevent births within the group;
(e) forcibly transferring children of the group to another group.

(a) The Group

735. Article 4, which corresponds to the Genocide Convention, protects a national, ethnical, racial, or religious group. This group is referred to in each of the underlying acts and, therefore, the presence of such a group is required for each constitutive element of the crime of genocide. While the criteria for identifying the group are not specified in the Genocide Convention,[3094] the jurisprudence of the Tribunal states that the determination of the group is to be made on a case-by-case basis, using both objective and subjective criteria.[3095] The group must have a particular,

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3088 Indictment, para. 10(a).
3089 Indictment, para. 10(b).
3090 Indictment, para. 24; Prosecution Pre-Trial Brief, paras. 330–331.
3091 Indictment, para. 24; Prosecution Pre-Trial Brief, para. 332.
3092 *Jelisić* Trial Judgement para. 60; *Krstić* Trial Judgement, para. 541; *Stakić* Trial Judgement, para. 500; *Brđanin* Trial Judgement, para. 680; *Blagojević and Jokić* Trial Judgement, para. 639. *See also Kayishema and Ruzindana* Trial Judgement, para. 88.
3093 *See, e.g., Popović* Trial Judgement para. 807; *Krstić* Trial Judgement para. 541; ICJ Bosnia Judgement paras. 142, 161.
3094 *Krstić* Trial Judgement, para. 555.
3095 *Brđanin* Trial Judgement, paras. 683–684 (finding that relevant group may be identified using the "subjective criterion of the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics," but that in determining the relevant protected group, it is also necessary to consult objective criteria because subjective criteria alone may not be sufficient to determine the

distinct identity and be defined by its common characteristics rather than a lack thereof.[3096] It is not sufficient to define a relevant protected group using negative criteria.[3097]

(b) Underlying Acts

(i) Killing Members of the Group

736. The elements of killing are equivalent to the elements of murder and have been described in the section on Murder, Chapter VII Section B and will, therefore, not be repeated here.[3098]

(ii) Causing Serious Bodily or Mental Harm to Members of the Group

737. Article 4(2)(b) refers to an intentional act or omission that causes "serious bodily or mental harm" to members of the targeted group.[3099] Like Article 4(2)(a), it is necessary pursuant to Article 4(2)(b) to prove a result.[3100] While the term "serious bodily or mental harm" is not defined in the Statute, the phrase is understood to mean, *inter alia,* acts of torture, inhumane or degrading treatment, sexual violence including rape, beatings, threats of death, and generally harm that seriously damages health, causes disfigurement, or causes serious injury to members of the group.[3101]

738. The determination of the seriousness of the bodily or mental harm inflicted on members of a group must be made on a case-by-case basis, with appropriate consideration given to the particular circumstances of each case.[3102] The harm must be of such a serious nature as to contribute or tend to contribute to the destruction of all or part of the group;[3103] although it need not be permanent or irreversible,[3104] it must go "beyond temporary unhappiness, embarrassment or humiliation" and

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group, for the reason that the acts identified in subparagraphs (a) to (e) of Article 4(2) must be directed against "members of the group"). *See also Jelisić* Trial Judgement, para. 70; *Semanza* Trial Judgement, para. 317; *Muvunyi* Trial Judgement, para. 484.

3096 *Stakić* Appeal Judgement, para. 21; *Popović* Trial Judgement, para. 809.

3097 *Brađanin* Trial Judgement, para. 685; *Stakić* Appeal Judgement, paras. 19–20, 22–24.

3098 *See supra* paras. 713–716. *See also Krajišnik* Trial Judgement, para. 859(i) (citing *Kayishema and Ruzindana* Appeal Judgement, para. 151); *Blagojević and Jokić* Trial Judgement, para. 642.

3099 *Krstić* Trial Judgement, para. 513.

3100 *Brđanin* Trial Judgement, para. 688; *Stakić* Trial Judgement, para. 514. *See also Popović* Trial Judgement, para. 811.

3101 *Brđanin* Trial Judgement, para. 690. *See also Blagojević and Jokić* Trial Judgement, para. 645; *Gatete* Trial Judgement, para. 584.

3102 *Blagojević and Jokić* Trial Judgement, para. 646; *Krstić* Trial Judgement, para. 513.

3103 *Krajišnik* Trial Judgement, para. 862; *Seromba* Appeal Judgement, para. 46. *See also Gatete* Trial Judgement, para. 584.

3104 *Brđanin* Trial Judgement, para. 690; *Stakić* Trial Judgement, para. 516; *Akayesu* Trial Judgement, paras. 502–504; *Kayishema and Ruzindana* Trial Judgement, para. 108; *Bagosora* Trial Judgement, para. 2117.

inflict "grave and long-term disadvantage to a person's ability to lead a normal and constructive life".[3105]

739. While forcible transfer does not constitute a genocidal act by itself,[3106] it can, in certain circumstances, be an underlying act causing serious bodily or mental harm—in particular if the forcible transfer operation was conducted under such circumstances as to lead to the death of all or part of the displaced population.[3107]

(iii) Deliberately Inflicting on the Group Conditions of Life Calculated to Bring About its Physical Destruction in Whole or in Part

740. The underlying acts covered by Article 4(2)(c) are methods of destruction that do not immediately kill the members of the group, but ultimately seek their physical destruction.[3108] Examples of such acts punishable under Article 4(2)(c) include, *inter alia,* subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion.[3109]

741. Unlike Articles 4(2)(a) and (b), Article 4(2)(c) does not require proof of a result such as the ultimate physical destruction of the group in whole or in part.[3110] However, Article 4(2)(c) applies only to acts calculated to cause a group's physical or biological destruction deliberately and, as such, these acts must be clearly distinguished from those acts designed to bring about the mere dissolution of the group.[3111] Such acts, which have been referred to as "cultural genocide", were excluded from the Genocide Convention.[3112] For example, the forcible transfer of a group or part of

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3105 *Krstić* Trial Judgement, para. 513. *See also Blagojević and Jokić* Trial Judgement,para. 645; *Gatete* Trial Judgement, para. 584.

3106 *Krstić* Appeal Judgement, para. 33. *See also Blagojević and Jokić* Appeal Judgement, para. 123; ICJ Bosnia Judgement, para. 190.

3107 Draft Genocide Convention, U.N. Doc. E/447 p. 20; *Krstić* Trial Judgement, para. 508; *Blagojević and Jokić* Trial Judgement, paras. 646, 650, 654.

3108 *Akayesu* Trial Judgement, para. 505. *See also Brđanin* Trial Judgement, para. 691; *Stakić* Trial Judgement, paras. 517–518; *Musema* Trial Judgement, para. 157; *Rutaganda* Trial Judgement, para. 52; *Popović* Trial Judgement, para. 814.

3109 *Brđanin* Trial Judgement, paras. 691; *Stakić* Trial Judgement, para. 517; *Musema* Trial Judgement, para. 157; *Kayishema and Ruzidana* Trial Judgement, paras. 115–116; *Akayesu* Trial Judgement, para. 506.

3110 *Brđanin* Trial Judgement, para. 691; *Stakić* Trial Judgement, para. 517. *See also Brđanin* Trial Judgement, para. 905.

3111 *Brđanin* Trial Judgement, paras. 692, 694; *Krstić* Trial Judgement, para. 580; *Stakić* Trial Judgement, para. 519. *See also* ICJ Bosnia Judgement, para. 344.

3112 Yearbook of the International Law Commission 1996, Volume II, part 2, Report of the Commission to the General Assembly on the work of its forty-eight session, pp. 45–46. *See also Brđanin* Trial Judgement, para. 694; *Stakić* Trial Judgement, para. 518.

a group does not, by itself, constitute a genocidal act, although it can be an additional means by which to ensure the physical destruction of a group.[3113]

742. Where direct evidence is absent regarding the "conditions of life" imposed on the targeted group and calculated to bring about its physical destruction, a chamber can be guided by "the objective probability of these conditions leading to the physical destruction of the group in part" and factors like the nature of the conditions imposed, the length of time that members of the group were subjected to them, and characteristics of the targeted group such as its vulnerability.[3114]

(iv) Imposing Measures Intended to Prevent Births Within the Group

743. Measures intended to prevent births within the group may be physical or mental.[3115] The following measures have been found to qualify as acts punishable under Article 4(2)(d): sexual mutilation, enforced sterilization, forced birth control, forced separation of males and females, and prohibition of marriages.[3116]

(c) Genocidal Intent

744. The *mens rea* of the crime of genocide is characterised by the requirement of a *dolus specialis*; a specific intent "to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".[3117] Thus, the crime of genocide requires not only proof of the perpetrator's intent to commit the underlying act, but also proof of the specific intent to destroy the protected group, in whole or in part.[3118]

745. Indications of such intent are rarely overt,[3119] however, and thus it is permissible to infer the existence of genocidal intent based on "all of the evidence, taken together",[3120] as long as this inference is "the only reasonable [one] available on the evidence".[3121] Factors relevant to this analysis may include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities, the systematic targeting of victims on

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3113 *Krstić* Appeal Judgement, paras. 31, 33; *Stakić* Trial Judgement, paras. 519. However, the fact that the forcible transfer does not constitute in and of itself a genocidal act does not preclude a Chamber from relying upon on it as evidence of a genocidal intent of a perpetrator. *See Krstić* Appeal Judgement, para. 33; ICJ Bosnia Judgement, para. 190.

3114 *Brđanin* Trial Judgement, para. 906. *See also Kayishema and Ruzindana* Trial Judgement, para. 548; *Krajišnik* Trial Judgement, para. 863.

3115 *Rutaganda* Trial Judgement, para. 53; *Akayesu* Trial Judgement, para. 508.

3116 *Rutaganda* Trial Judgement, para. 53; *Akayesu* Trial Judgement, para. 507.

3117 Genocide Convention, Art. 2. *See also Akayesu* Trial Judgement, para. 498; ICJ Bosnia Judgement, para. 187.

3118 *Krstić* Appeal Judgement, para. 20.

3119 *See, e.g., Kayishema and Ruzindana* Appeal Judgement, para. 159; *Gacumbitsi* Appeal Judgement, para. 40.

3120 *Stakić* Appeal Judgement, para. 55. *See also Hategekimana* Appeal Judgement, para. 133; *Munyakazi* Appeal Judgement, para. 142 (holding that an accused's intent to participate in a crime may be inferred from circumstantial evidence).

account of their membership in a particular group, or the repetition of destructive and discriminatory acts.[3122] The existence of a plan or policy,[3123] a perpetrator's display of his intent through public speeches[3124] or meetings with others may also support an inference that the perpetrator had formed the requisite specific intent.[3125]

(i) Intent to Destroy the Targeted Group "As Such"

746. A perpetrator's specific intent to destroy can be distinguished from the intent required for persecutions as a crime against humanity on the basis that a perpetrator who possesses genocidal intent has formed more than an intent to harm a group by virtue of his discriminatory acts; he actually intends to *destroy* the group itself.[3126] The Genocide Convention as well as customary international law require that the perpetrator intends to destroy the group physically or biologically.[3127] Although an attack on cultural or religious property or symbols of the group would not constitute a genocidal act, such an attack may nevertheless be considered evidence of an intent to physically destroy the group.[3128]

747. The term "as such" reemphasises the crime's prohibition of the destruction of the protected group itself, as opposed to the destruction of a collection of the group's individual members.[3129] Although the victim of the underlying act is selected by reason of his or her membership in a group, "the victim of the crime of genocide is the group itself and not only the individual".[3130]

748. While evidence of intent to forcibly remove is not necessarily indicative of an intent to destroy a group, it may nevertheless constitute evidence of the latter when considered in connection with "other culpable acts systematically directed against the same group".[3131] Moreover, the fact

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3121 *Brđanin* Trial Judgement, para. 970. *See also Hategekimana* Appeal Judgement, para. 133.
3122 *Jelisić* Appeal Judgement, para. 47.
3123 *Jelisić* Appeal Judgement, para. 48. While the existence of a plan or policy is not a "legal ingredient" of the crime, the existence of such may indicate the formation of specific intent. *Ibid.*
3124 *See, e.g., Gacumbitsi* Appeal Judgement, para. 43; *Kajelijeli* Trial Judgement, para. 531.
3125 *See, e.g., Kamuhanda* Appeal Judgement, paras. 81–82; *Karera* Trial Judgement, para. 542.
3126 ICJ Bosnia Judgement, para. 187. *See also Kupreškić et al.* Trial Judgement, para. 636.
3127 Yearbook of the International Law Commission 1996, Volume II, part 2, Report of the Commission to the General Assembly on the work of its forty-eight session, pp. 45-46. *See also Krstić* Appeal Judgement, para. 25; *Semanza* Trial Judgement, para. 315.
3128 *Krstić* Appeal Judgement, Partially Dissenting Opinion of Judge Shahabuddeen, paras. 53–54 (holding that the deliberate destruction of the principal mosque belonging to members of the targeted group would be considered as evidence of intent to destroy the group).
3129 *See, e.g., Stakić* Appeal Judgement, para. 20.
3130 *Akayesu* Trial Judgement, para. 521. *See also Niyitegeka* Appeal Judgement, para. 53.
3131 *Krstić* Appeal Judgement, para. 33. Similarly, the Appeals Chamber has determined that, analysed solely in connection with forcible transfer, "'opportunistic killings' by their very nature constitute a very limited basis for inferring genocidal intent". *Blagojević and Jokić* Appeal Judgement, para. 123.

that a perpetrator did not choose the most efficient method to destroy the targeted group is not necessarily dispositive of a lack of genocidal intent.[3132]

(ii) Intent to Destroy the Group "in Whole or in Part"

749. The term "in whole or in part", relates to the requirement that the perpetrator intended to destroy at least a substantial part of a protected group.[3133] While there is no numeric threshold of victims required,[3134] the targeted portion must comprise a "significant enough [portion] to have an impact on the group as a whole".[3135] Although the numerosity of the targeted portion in absolute terms is relevant to its substantiality, this is not dispositive; other relevant factors include the numerosity of the targeted portion in relation to the group as a whole, the prominence of the targeted portion, and whether the targeted portion of the group is "emblematic of the overall group, or is essential to its survival",[3136] as well as the area of the perpetrators' activity, control, and reach.[3137] The *Jelisić* Trial Chamber held that as well as consisting of the desire to exterminate a very large number of members of the group, genocidal intent may also consist of the desired destruction of a more limited number of persons selected for the impact that their disappearance would have on the survival of the group as such.[3138] The applicability of these factors and the relative weight afforded to each must be analysed on a case-by-case basis.[3139]

3132 *Krstić* Appeal Judgement, para. 32.
3133 *Krstić* Appeal Judgement, para. 12.
3134 *Semanza* Trial Judgement, para. 316; *Kajelijeli* Trial Judgement, para. 809.
3135 *Krstić* Appeal Judgement, para. 8.
3136 *Krstić* Appeal Judgement, para. 12.
3137 *Krstić* Appeal Judgement, para. 13.
3138 *Jelisić* Trial Judgement, para. 82. The *Jelisić* Trial Chamber cited the Final Report of the Commission of Experts formed pursuant to Security Council Resolution 780 which found "[i]f essentially the total leadership of a group is targeted, it could also amount to genocide. Such leadership includes political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others – the totality per se may be a strong indication of genocide regardless of the actual numbers killed. A corroborating argument will be the fate of the rest of the group. The character of the attack on the leadership must be *viewed in the context of the fate or what happened to the rest of the group*. If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example deported on a large scale or forced to flee, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose." *See Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992)*, UN Off. Doc., S/1994/674 ("Commission of Experts Report"), para. 94. The Commission of Experts Report stated, further, that "[s]imilarly, the extermination of a group's law enforcement and military personnel may be a significant section of a group in that it renders the group at large defenceless against other abuses of a similar or other nature, particularly if the leadership is being eliminated as well. Thus the intent to destroy the fabric of a society through the extermination of its leadership, when accompanied by other acts of elimination of a segment of society, can also be deemed genocide", Commission of Experts Report, para. 94.
3139 *Krstić* Appeal Judgement, para. 14.

3. Findings

(a) The Group

750. The Prosecution has defined the targeted group that is the subject of the charges in the Indictment as the "Muslim population of Eastern Bosnia", as constituting "part" of the Bosnian Muslim people.[3140] The identification of the Bosnian Muslims as a protected group within the meaning of Article 4 of the Statute is an issue that has been settled by the Appeals Chamber and consequently, the Chamber does not deem it necessary to revisit the issue here.[3141]

(b) Underlying Acts

(i) Killing Members of the Group

751. Elsewhere in this Judgement, the Majority, Judge Nyambe dissenting, has found that at least 5,749 Bosnian Muslims from Srebrenica were killed by Bosnian Serb Forces, other than in combat, in the aftermath of the fall of Srebrenica.[3142] The Majority, Judge Nyambe dissenting, has found that these killings include the 4,970 Bosnian Muslim men established to have been killed by Bosnian Serb Forces in the specific circumstances alleged in paragraph 21.1-22.4 of the Indictment.[3143] In addition, the Chamber has found that three Muslim leaders of Žepa were killed by Bosnian Serb Forces, as alleged in paragraph 23.1 of the Indictment.[3144]

752. On the basis of these findings, the Chamber is satisfied beyond reasonable doubt that members of the protected group were killed.

(ii) Causing Serious Bodily or Mental Harm to Members of the Group

753. The circumstances under which thousands of Bosnian Muslims faced their deaths is described in detail in Chapter V wherein the Chamber made findings in relation to 23 separate killing incidents in the areas of Potočari, Bratunac, Zvornik, and locations in Bišina, near Trnovo and near Tišća.

3140 Indictment, paras. 10, 24; Prosecution Final Brief, para. 197.

3141 *Krstić* Appeal Judgement, para. 6 (noting the Trial Chamber's conclusion in this regard and the fact that it was not challenged on appeal), and para. 15; *Krstić* Trial Judgement, paras. 559–560; *Blagojević and Jokić* Trial Judgement, para. 667. This finding was not appealed in this case, either. *See also Popović et al.* Trial Judgement, para. 840. Whether the Bosnian Muslims of eastern BiH qualify as a substantial part of the protected group, as required by the law, will be discussed in more detail below. *See infra* paras. 774–775.

3142 *See supra* para. 596.

3143 *See supra* para. 570.

3144 *See supra* paras. 680, 721.

754. The group of men that elected not to join the column of Bosnian Muslims who headed to ABiH-held territory after the fall of Srebrenica on 11 July 1995 and instead joined their families to seek shelter at the UN compound in Potočari, must have soon realised there was no hope of being protected. The night before the transportations of the women, children and elderly began, the Bosnian Muslim population in Potočari huddled together in horrid conditions at the UN compound with insufficient food, water or proper sanitation, enduring a night of terror inflicted by Bosnian Serb Forces on the night thereafter.[3145] The men were abruptly and systematically separated from their female family members. They were forced to leave their belongings and IDs behind before being detained in the White House, mistreated, and finally shipped off in buses towards Bratunac.[3146] At least 800 Bosnian Muslim men, comprised of some of the men from Potočari as well as men captured from the column, were murdered in the Bratunac area[3147] while others continued to be detained in various temporary facilities. These men were kept in abominable conditions for a further period of time before being transported to remote locations in the Zvornik area.[3148] The Chamber finds that the group of men separated in Potočari and taken to the White House, as well as the group of men who surrendered or were captured from the column throughout 13 July, would have become aware at one stage or another of the real possibility that they would ultimately meet their death at the hands of Bosnian Serb Forces who were detaining them.[3149] It finds that the suffering of these men, in the days and hours before they were killed, amounted to serious bodily or mental harm.

755. The accounts of survivors of these events who escaped their imminent death and lived to provide their testimony is harrowing. The Chamber feels compelled to highlight some of these accounts, and considers that they are illustrative of the experience of the thousands who were not so fortunate.

> PW-004, a sole survivor of killings that took place at the Jadar river in Bratunac on 13 July 1995, recalled how shortly before being shot at by Bosnian Serb Forces, he and the other men "waited for our lives to end there, and we expected – there was half a minute of silence, and just then the images of my children appeared in my mind, and I thought I was done for."[3150] Shot in the hip, PW-004 threw himself into the river in an attempt to escape, continuing to be shot at by Bosnian Serb Forces still standing at the banks of the river.[3151]
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> PW-006, a survivor of the between 600 and 1000 Bosnian Muslim men who were killed at the Kravica Warehouse by Bosnian Serb Forces on 13 July 1995, described being shot, pretending to be dead, and climbing over dead bodies to escape through a window of the warehouse from where

3145 *See supra* paras. 242–244.
3146 *See supra* para. 280.
3147 *See supra* para. 568.
3148 *See, e.g.*, paras. 323–325, 331, 337–338, 385, 387, 398, 407.
3149 *See infra* para. 866.
3150 PW-004, Ex. P00442, KT. 3267–3277 (23 May 2000); PW-004, T. 2721 (15 June 2010).
3151 PW-004, Ex. P00442, KT. 3277 (23 May 2000); PW-004, T. 2719–2722 (15 June 2010); Ex. P00094, pp. 78–79. Ex. P00448; Ex. P00464.

he fell into a cornfield.[3152] A soldier approached him and shot him in the right shoulder, asking him whether he wanted another one; PW-006 pretended to be dead.[3153] He remained in this spot throughout the night, and heard the sound of excavators.[3154] He heard soldiers shooting individuals who were not yet dead.[3155] He crawled to a nearby river, where he saw two men shot in the head.[3156] He ultimately found his way to Žepa which at the time had not yet fallen, and was evacuated.[3157]

The Chamber recalls here the testimony of a witness to the executions in Orahovac on 14 July that he observed a child of about five or six years old standing up from the pile of bodies which he described as "a pile of flesh in bits",[3158] and calling out for his father "Baba, where are you?" The child was in shock, covered in blood stains and bits of others' bowel and tissue. He was taken to a hospital and Zvornik, treated for his injuries and survived.[3159]

On 16 July 1995 PW-016 and PW-073 were directed to a meadow at Branjevo Military Farm in Zvornik, where they saw the bodies of those shot before them; they were lined up, shot at, and heard the summary executions of individuals who had not died after the first burst of gunfire.[3160] PW-016 and PW-073 pretended to be dead to avoid being shot.[3161] They subsequently managed to escape the killing fields, wandered around aimlessly for the next few days looking for food and water, and ultimately gave themselves up to the same forces they had escaped from, in the hope of survival.[3162] PW-016 and PW-073 were then taken to Batković camp where they stayed until their release in December 1995.[3163]

There is no doubt in the mind of the Chamber that the suffering inflicted on the Bosnian Muslim men in the days and hours before their deaths was of the most serious nature, and that these horrific confrontations with death have had a long-lasting impact on those that survived. As such, the Chamber finds that the harm inflicted upon them rises to the level of serious bodily and mental harm, a phrase which, the Chamber recalls, is understood to mean, *inter alia,* inhumane or degrading treatment, causing serious injury to members of the group. The Chamber is satisfied, moreover, that this harm was of such a nature as to contribute or tend to contribute to the destruction of all or part of the group in that their suffering prevented these members of the group from leading a normal and constructive life.

756. The separation of men at Potočari and the subsequent murder operation of the Bosnian Muslim men as established by the Chamber, moreover, had a profound psychological impact upon the female members of the protected group. Separated from their husbands, sons and other male family members in Potočari, they headed towards Kladanj uncertain about their own fate and that of their loved ones. In the context of the prevailing circumstances in Potočari at the point in time that

3152 PW-006, Ex. P02797, PT. 7001–7003 (7 February 2007).
3153 PW-006, Ex. P02797, PT. 7004–7005 (7 February 2007).
3154 PW-006, Ex. P02797, PT. 7005–7006 (7 February 2007).
3155 PW-006, Ex. P02797, PT. 7006 (7 February 2007).
3156 PW-006, Ex. P02797, PT. 7007 (7 February 2007).
3157 PW-006, Ex. P02797, PT. 7009–7017 (7 February 2007).
3158 PW-061, Ex. P01672, PT. 7581–7582 (22 February 2007).
3159 *See supra* para. 429.
3160 *See supra* paras. 492–493.
3161 PW-073, Ex. P00048 (confidential), p. 34; PW-016, Ex. P01762, KT. 3042 (14 April 2000).
3162 PW-073, Ex. P00048 (confidential), pp. 40, 43; PW-016, Ex. P01762, KT. 3045 (14 April 2000); PW-016, T. 9356 (private session) (3 February 2011).

the separation took place, their fear was justified, and it was real. Some of the buses of the convoys leaving Potočari were stopped and searched for men; upon arrival in Tisća in the Luke area, where the Bosnian Muslims were told to disembark, the men that had made it onto the first convoy were taken away.[3164] The Chamber recalls its findings that approximately 22 Bosnian Muslim men were beaten by VRS soldiers at a school in Luke, and subsequently murdered in the early hours of 14 July 1995.[3165] The thousands of women and children who arrived in this same area, tired, scared and having been deprived of sufficient amounts of water and food, were told to make their way to Tuzla in ABiH-held territory by foot, a walk of several kilometres. The UN was not prepared for this massive group of mostly women arriving in Tuzla within a period of 24 hours following the start of the transportation, and was unable to provide them with any support.[3166] The women expressed their fears for the fate of their men to UNPROFOR, but no one was able to do anything for them. When asked for any examples of the concern or distress that stand out in his mind, UNPROFOR Civil Affairs officer Edward Joseph stated the following:

> Yes. I remember I have an image, a clear image, of one woman and I should say they were all reasonably thin, quite thin, was another sort of distinct memory that I have of them which was the case in many parts of Bosnia that -- where people were relatively deprived and isolated. And I have an image in my mind of a woman who had wandered away from the main part where we had grouped these refugees, and there was a barbed wire perimeter, because obviously these are military installations, and this woman was attempting to scale, with her bare hands, was attempting to scale the barbed wire fence and I asked her what she was doing and she was absolutely determined to scale because a rumour had circulated that the some men, some of the Srebrenica men, were nearby there, and she was determined that she was going to go explore and see if -- whether it was her son or husband was there."[3167]

The Chamber has no doubt that the suffering these women went through resulted in serious mental harm.

757. The suffering of the women, children and the elderly who were forcibly transferred from Srebrenica did not end in Tuzla. Their lives were drastically changed as they found themselves without a permanent home often lacking basic necessities, struggling to get by financially,[3168] while at the same time continuing to suffer the emotional distress caused by the loss of their loved ones.[3169] Some of the children have been unable to process what has happened.[3170] Testimonies of

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3163 PW-073, Ex. P00048 (confidential), pp. 45, 61, 105; PW-016, Ex. P01762, KT. 3046 (14 April 2000); PW-016, T. 9357 (3 February 2011).

3164 *See supra* n. 1163.

3165 *See supra* para. 314.

3166 Edward Joseph, Ex. P01949, PT. 14151–14152 (22 August 2007); Edward Joseph, T. 10669, 10678 (2 March 2011).

3167 Edward Joseph, Ex. P01949, PT. 14151–14152 (22 August 2007).

3168 *See, e.g.*, Razija Pašagić, Ex. P01532 (15 June 2000), pp. 3–4; Rahima Malkić, Ex. P01521 (17 June 2000), p. 4; Hanifa Hafizović, Ex. P01522 (16 June 2000), p. 4; Mejra Mesanović, Ex. P01525 (19 June 2000) pp. 3–4; Salih Mehmedović, Ex. P01531 (15 June 2000), p. 4; Hana Mehmedović, Ex. P01533 (17 June 2000), p. 7; Mevlida Bektić, Ex. P01534 (16 June 2000), p. 4.

3169 *See, e.g.*, Rahima Malkić, Ex. P01521 (17 June 2000), p. 4; Hanifa Hafizović, Ex. P01522 (16 June 2000), p. 5.; Husein Delić, Ex. P01523 (21 June 2000) pp. 3–4; Sifa Hafizović, Ex. P01527 (16 June 2000), p. 4; Nura Efendić,

the women and some of the elderly demonstrate that their quality of life was significantly affected by the forcible transfer operation.[3171] Following their forcible transfer, they did not have any hope of returning to their former homes;[3172] many of the homes were destroyed,[3173] and some did not return because they feared the Serbs living in their former villages.[3174] The Chamber has before it the testimony of women who are so profoundly traumatized that they prefer to die.[3175] Razija Pašagić, a Bosnian Muslim woman who last saw her husband on 13 July in Potočari, described her suffering in the following way:

> "I live but actually my life does not exist, or we can say my life goes on but I do not exist".[3176]

758. The transportation of the population from Žepa in late July 1995 was accompanied by slightly different circumstances, although there are some important similarities. It followed a period of intense VRS attacks on surrounding villages near Žepa.[3177] Žepa's population had fled to the mountains to seek refuge; on 20 July 1995, the VRS used loudspeakers pressuring the emotionally distressed population to return to the enclave.[3178] Most of the population returned, while many of the able-bodied men stayed behind in the mountains.[3179] By this time, the news of the murders of the Bosnian Muslim men from Potočari and the column had started to spread.[3180] The Accused walked through the crowd directing the activities, brandishing his weapon in the air.[3181] Mladić

Ex. P01528 (21 June 2000), pp. 3–5; Mirsada Gabeljić, Ex. P01529 (18 June 2000), p. 4; Amer Malagić, Ex. P01530 (19 June 2006), pp. 5–6; Salih Mehmedović, Ex. P01531 (15 June 2000), p. 5; Razija Pašagić, Ex. P01532 (15 June 2000), p. 4.

3170 Teufika Ibrahimefendić, T. 10081–10082 (17 February 2011).

3171 *See, e.g.,* Rahima Malkić, Ex. P01521 (17 June 2000), p. 3; Hanifa Hafizović, Ex. P01522 (16 June 2000), pp. 3–4; Husein Delić, Ex. P01523 (21 June 2000) pp. 3–4; Mejra Mesanović, Ex. P01525 (19 June 2000) pp. 3–4; Sifa Hafizović, Ex. P01527 (16 June 2000), pp. 3–4; Nura Efendić, Ex. P01528 (21 June 2000), pp. 4–5; Mirsada Gabeljić, Ex. P01529 (18 June 2000), pp. 3–4; Amer Malagić, Ex. P01530 (19 June 2006), p. 4; Salih Mehmedović, Ex. P01531 (15 June 2000), pp. 3, 5; Razija Pašagić, Ex. P01532 (15 June 2000), p. 3; Hana Mehmedović, Ex. P01533 (17 June 2000), p. 6; Mevlida Bektić, Ex. P01534 (16 June 2000), p. 4. *See also* Teufika Ibrahimefendić, Ex. P01817, KT. 5840 (27 July 2000).

3172 Rahima Malkić, Ex. P01521 (17 June 2000), p. 4; Husein Delić, Ex. P01523 (21 June 2000) pp. 3–4; Mejra Mesanović, Ex. P01525 (19 June 2000) p. 4; Amer Malagić, Ex. P01530 (19 June 2006), p. 5; Salih Mehmedović, Ex. P01531 (15 June 2000), p. 5; Hana Mehmedović, Ex. P01533 (17 June 2000), p. 7. *See also* Teufika Ibrahimefendić, Ex. P01817, KT. 5832 (27 July 2000); Teufika Ibrahimefendić, T. 10089 (17 February 2011) (testifying that the women she treated were unable to visualize their futures).

3173 Hanifa Hafizović, Ex. P01522 (16 June 2000), p. 3; Sifa Hafizović, Ex. P01527 (16 June 2000), p. 4; Rahima Malkić, Ex. P01521 (17 June 2000), p. 4; Mejra Mesanović, Ex. P01525 (19 June 2000) p. 4; Hana Mehmedović, Ex. P01533 (17 June 2000), p. 7.

3174 Rahima Malkić, Ex. P01521 (17 June 2000), pp. 4–5; Husein Delić, Ex. P01523 (21 June 2000) p. 3; Mejra Mesanović, Ex. P01525 (19 June 2000) pp. 4–5; Amer Malagić, Ex. P01530 (19 June 2006), p. 5. *See also* Salih Mehmedović, Ex. P01531 (15 June 2000), p. 3.

3175 Rahima Malkić, Ex. P01521 (17 June 2000), p. 4 ("Now when I get sick I don't consider going to the doctor because I simply want to die"); Hanifa Hafizović, Ex. P01522 (16 June 2000), p. 4 ("if God showed me mercy tomorrow and I died I would be happy.").

3176 Razija Pašagić, Ex. P01532 (15 June 2000), p. 4. *See also* Teufika Ibrahimefendić, T. 10081 (17 February 2011) (testifying that many of the women from Srebrenica that she treated were apathetic and depressed).

3177 *See supra* paras. 600–603, 612–616, 625–628.

3178 *See supra* para. 621.

3179 *See supra* para. 639, n. 2737.

3180 *See supra* para. 674.

3181 *See supra* para. 673.

entered numerous buses and addressed the groups of frightened Bosnian Muslims, telling them that he was giving them their lives as a gift.[3182] It is against this backdrop that the Majority has evaluated, and finds, that serious mental harm was inflicted upon the Bosnian Muslims who were forcible transferred out of Žepa between 25 and 27 July 1995.

759. The Majority, Judge Nyambe dissenting, has no doubt that the suffering of the Bosnian Muslim population that was forcibly transferred from Srebrenica and Žepa rises to the level of serious bodily or mental harm. The Majority finds, therefore, that this suffering qualifies as an underlying act of genocide pursuant to Article 4(2)(b) of the Statute.

(iii) Deliberately Inflicting on the Group Conditions of Life Calculated to Bring About its Physical Destruction in Whole or in Part, and Imposing Measures Intended to Prevent Births Within the Group

760. The Prosecution alleges that the forcible transfer of the women and children from Srebrenica and Žepa, the separation of men in Potočari, and the execution of men from Srebrenica created conditions that would contribute to the destruction of the entire Muslim population of Eastern BiH, "including but not limited to the failure of the population to live and reproduce normally."[3183] This allegation subsumes the underlying acts of genocide set out in Article 4(2)(c) and Article 4(2)(d) of the Statute.

761. In its Final Brief, the Prosecution makes specific submissions on destruction "through psychological trauma of survivors";[3184] "through breakdown of family life, including decreasing birth rate";[3185] and "through forcible transfer: poverty and failure to live normally".[3186] These headings are subsumed under the section entitled "Destruction of the Muslim women and children – victim impact", wherein the Prosecution submits that the Accused "knew that the transfers would prevent the population from living and reproducing normally within the meaning of ICTY Statute Article 4(2)(c) and (d)"[3187] and that the Accused's contributions to the murder of the able-bodied

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3182 *See supra* para. 648.

3183 Indictment, para. 24; Prosecution Pre-Trial Brief, para. 332. *See also* Prosecution Final Brief, paras. 829–830. The Chamber notes that the Prosecution, in its Final Brief, submits that through the forcible transfer of the women and children from Srebrenica and Žepa, the Accused intended to create conditions that would contribute to the destruction of the Muslim population of Eastern BiH, and that the Accused knew that the transfers would prevent the population from living and reproducing normally, in that he knew that the transfers would ensure that the Bosnian Muslim population of these enclaves would not return to the regions, nor reconstitute elsewhere (para. 829). The Prosecution then adds that the Accused's contributions to the murder of the able-bodied men from Srebrenica "also had the effect of destroying the population of Bosnian Muslims from Srebrenica and Žepa" (para. 830).

3184 Prosecution Final Brief, paras. 831–834, and paras. 835–838 on the "Srebrenica Syndrome", specifically.

3185 Prosecution Final Brief, paras. 839–845.

3186 Prosecution Final Brief, paras. 846–848.

3187 Prosecution Final Brief, para. 829.

men from Srebrenica "also had the effect of destroying the population".[3188] In this same paragraph, however, the Prosecution also makes the submission that the women and children who survived the "horrors of Srebrenica and Žepa" have suffered within the meaning of Article 4(2)(b) of the Statute.[3189] The Chamber, therefore, has considered the specific submissions set out by the Prosecution in paragraphs 831–848 of its Final Brief in relation to both Article 4(2)(b)—already discussed in the above section—as well Article 4(2)(c) and 4(2)(d) of the Statute, to the extent it considers them applicable.

762. The Chamber recalls that Article 4(2)(c) covers methods of destruction that do not immediately kill the members of the group, but ultimately seek their physical destruction. No proof of result such as the ultimate physical destruction of the group is required. The Chamber recalls, further, that Article 4(2)(c) applies only to conditions of life, deliberately inflicted, calculated to bring about the group's physical or biological destruction and, as such, these acts must be clearly distinguished from those acts designed to bring about the mere dissolution of the group.

763. The Prosecution has submitted, *inter alia,* that because the Bosnian Muslim communities of Srebrenica and Žepa were traditional patriarchal communities,[3190] "[r]emoving the men and simultaneously uprooting the women, children and elderly has resulted in the complete destruction of the pre-war familial and community structure of the Srebrenica Muslims, as women are forced to fill not only their traditional roles, but also the economic, emotional and social roles of their missing husbands."[3191] Moreover, the Prosecution asserts, the women face the additional hindrance of indeterminate marital status since many of their husbands have not been declared dead and are therefore unable to remarry,[3192] and many choose not to remarry because of a lack of similarly aged men, the loss of a husband's pension upon remarriage, and the social stigma of remarriage as well as feelings of guilt.[3193] Referring to Prosecution witness Teufika Ibrahimefendić's testimony on this point, the Prosecution submits that "consequently," the birth rate amongst these Bosnian Muslim women "appears to be decreasing".[3194] The Prosecution further alleges that the loss felt by some of these women results from the fear that the family name may cease to exist because no male relatives remain to carry it forward.[3195]

3188 Prosecution Final Brief, para. 830.
3189 Prosecution Final Brief, para. 830.
3190 Prosecution Final Brief, para. 839.
3191 Prosecution Final Brief, para. 840.
3192 Prosecution Final Brief, paras. 841, 844.
3193 Prosecution Final Brief, paras. 841, 843.
3194 Prosecution Final Brief, para. 843, citing to Teufika Ibrahimefendić, Ex. P01817, KT. 5817, 5842 (27 July 2000).
3195 Prosecution Final Brief, para. 845.

764. In seeking to clarify the meaning of "physical or biological destruction", the Chamber was particularly guided by the following finding made by the *Blagojević and Jokić* Trial Chamber:

> The Trial Chamber finds in this respect that the physical or biological destruction of a group is not necessarily the death of the group members. While killing large numbers of a group may be the most direct means of destroying a group, other acts or series of acts, can also lead to the destruction of the group. [...] The Trial Chamber finds that the physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members. In such cases the Trial Chamber finds that the forcible transfer of individuals could lead to the material destruction of the group, since the group ceases to exist as a group, or at least as the group it was. The Trial Chamber emphasises that its reasoning and conclusion are not an argument for the recognition of cultural genocide, but rather an attempt to clarify the meaning of physical or biological destruction.[3196]

765. The Chamber is cognizant of the fact that, as held by the Appeals Chamber, displacement of a people is not equivalent to destruction[3197] and that forcible transfer in and of itself is not a genocidal act.[3198] The Chamber notes that the Accused makes a specific submission to this effect in his Final Brief.[3199] However, the Chamber considers there are instances where a forcible transfer operation must be viewed in the context of other criminal operations against the same targeted group to properly determine its overall effect on a given population. Contrary to the Accused's submission that the forcible transfer of a population from one territory to another is not an act that can contribute to destruction of the group,[3200] the Chamber recalls the *Krstić* Appeals Chamber's confirmation that forcible transfer can be an *additional* means by which to ensure the physical destruction of a group.[3201]

766. In its determination of whether the Bosnian Serb Forces deliberately inflicted conditions of life that were calculated to bring about the protected group's destruction, the Majority, Judge Nyambe dissenting,[3202] has therefore considered the overall effect of not only the forcible transfer operations of the women and children of the protected group, but also of the killing of at least 5,749 Bosnian Muslim men from this same group. The Majority finds that the combined effect of these operations had a devastating effect on the physical survival of the Bosnian Muslim population of Eastern BiH, and is satisfied that the goal of these operations was not merely the "dissolution" of the Bosnian Muslims of Eastern BiH; these operations were aimed at destroying this Bosnian Muslim community and preventing reconstitution of the group in this area. In this respect, the

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3196 *Blagojević and Jokić* Trial Judgement, para. 666.
3197 *Blagojević and Jokić* Appeal Judgement, para. 123, n. 337.
3198 *Blagojević and Jokić* Appeal Judgement, para. 123.
3199 Accused Final Brief, para. 104 (submitting that forced movement of a population does not in itself constitute genocide).
3200 *See* Accused Final Brief, para. 104.
3201 *Krstić* Appeal Judgement, para. 31.
3202 On the basis of her dissent on the legal findings of forcible transfer and the total numbers of persons found to have been killed by Bosnian Serb Forces otherwise than in combat in the aftermath of the fall of Srebrenica (5,749), Judge Nyambe has limited her consideration of factors to be taken into account in this regard to the murder of the

Majority recalls its findings that Bosnian Serb Forces burnt and destroyed homes of Bosnian Muslims in the period leading up to the fall of Srebrenica and Žepa as well as in the period of the takeovers of the enclaves and immediately following.[3203] Following the fall of the enclaves, the mosques in Srebrenica and in Žepa were destroyed.[3204] The Majority therefore finds that the conditions resulting from the acts of Bosnian Serb Forces, as part of the combined effect of the forcible transfer and killing operations were deliberately inflicted, and calculated to lead to the physical destruction of the Bosnian Muslim population of Eastern BiH. This is, in the view of the Majority, Judge Nyambe dissenting, is the only reasonable inference to draw from the evidence.

767. With respect to Article 4(2)(d), the Chamber does not put into question the fact that as a consequence of the choice of many of the women who were transferred not to remarry because of the "the lack of similarly-aged men, the loss of a husband's pension upon remarriage, the social stigma of remarriage and feelings of guilt"[3205] the birth rate in the community may have decreased. The Chamber does not, however, consider that this consequence of the forcible transfer operation qualifies as a "measure" imposed by the Bosnian Serb Forces "intended to prevent births within the group".

(c) Genocidal Intent

768. As the Prosecution points out, and the Chamber reiterates, the broader, objective context in which the genocidal conduct of the Accused occurred should not be confused with the mental state element or any of its components.[3206] The mental state of the Accused will be discussed in the Chapter concerning his responsibility.[3207]

(i) Intent to Destroy the Targeted Group "As Such"

769. The circumstances under which the separation of men in Potočari occurred on 12 and 13 July 1995, the opportunistic killing of one Bosnian Muslim man that the Chamber has established occurred in Potočari on 13 July, and the capture of thousands of Bosnian Muslim men from the column on this day alone are, in and of themselves, telling of the intent of the Bosnian Serb Forces

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4,970 Bosnian Muslim men by Bosnian Serb Forces.

3203 *See supra* paras. 264, 600, 676.

3204 *See supra* para. 676. With respect to the mosque in Srebrenica, the Chamber notes that the evidence as to when this particular mosque was destroyed is not conclusive. The testimony of Jean-René Ruez, on the basis of video-footage and photographic imagery, suggests that it was destroyed sometime after 14 July but it is uncertain, on the evidence, on which particular date this occurred. Jean-René Ruez, T. 1055–1056 (30 March 2010); Ex. P00094, pp. 268–269; Jean-René Ruez, T. 961–962 (29 March 2010); Ex. P00082. The Majority considers, on the basis of all the evidence taken together, in particular given the fact that the mosque in Žepa was destroyed by Bosnian Serb Forces following its fall, that the mosque in Srebrenica was destroyed by Bosnian Serb Forces soon after the fall of the enclave.

3205 Prosecution Final Brief, para. 843.

3206 Amended Pre-Trial Brief, para. 334.

concerning the fate of this part of the protected group. In Potočari, identification documents of the men who were separated from their families and detained in the White House were collected, and burnt after these men were shipped off to Bratunac.[3208] Upon arrival in Bratunac, they were placed together with the men captured from the column and detained in inhumane conditions in several temporary facilities before meeting their death.[3209] Many of them were mistreated and witnessed others being taken away, following which gunshots were heard. The specific intent of the Bosnian Serb Forces to destroy the Bosnian Muslims of Eastern BiH, moreover, can be inferred from the fact that a proposal to open up a corridor and let the column, headed by armed ABiH members, move through to ABiH-held territory was opposed; instead, the column was systematically targeted in order to capture and kill as many Bosnian Muslim men possible. It was not until Bosnian Serb Forces were forced to accept that it was costing them too much manpower to engage in combat with the armed members of the column that a decision was made, ultimately, to open up such a corridor.[3210]

770. The Majority recalls that at least 5,749 Bosnian Muslim men from Srebrenica were killed by Bosnian Serb Forces in a period of only several days. These killings followed a pattern. Bosnian Serb Forces were deployed to specifically selected remote locations to take part in these killings. The vast majority of the killings occurred in an efficient and orderly manner; following some of the largest mass executions in Bratunac and Zvornik between 13 and 16 July 1995, machinery and manpower were swiftly put in place to remove, transport and bury thousands of bodies. These bodies were later dug up and reburied in a further effort to conceal what had occurred. There is no doubt in the Majority's mind, Judge Nyambe dissenting, and indeed the evidence has demonstrated,[3211] that several layers of leadership were involved in the organization and coordination of the killing operation.

771. Neither the men from Potočari nor the men captured from the column—to the extent that they were members of the ABiH—were taking an active part in combat when they were killed. The scope and nature of these killings alone allow the Chamber to safely infer that there was an intent to destroy the group to which all these men belonged.

772. The Majority recalls its finding that the suffering inflicted upon the men who were separated, detained and killed, the suffering of the few men who survived, and the suffering of the women, children and elderly who were forcibly transferred from Potočari and Žepa constituted the

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3207 *See infra* Chapter VIII.
3208 *See supra* para. 291.
3209 *See supra* n. 3148.
3210 *See supra* paras. 512–513.
3211 *See infra* Chapter VIII. D.

underlying act of causing serious bodily or mental harm to members of the group within the meaning of Article 4(2)(b) of the Statute. The Majority further recalls its finding that the conditions resulting from the acts of Bosnian Serb Forces, as part of the combined effect of the forcible transfer and killing operations were deliberately inflicted, and calculated to lead to the physical destruction of the Bosnian Muslim population of Eastern BiH, within the meaning of Article 4(2)(c) of the Statute. The Chamber takes guidance from the *Stakić* Appeals Chamber which held that rather than considering separately whether there was an intent to destroy the group through each of the enumerated acts in Article 4 of the Statute, consideration should be given to all of the evidence, taken together.[3212] In the view of the Chamber, this approach is in line with the fluid concept of intent. In the circumstances of this case, where the underlying acts of genocide were committed in a period of less than a month, in a confined geographical area and by forces who, as the evidence has demonstrated, closely coordinated their activities to ensure the efficiency of both the killing and forcible transfer operations, it would be artificial to make a finding that genocidal intent existed for some acts, and not for others.

773. Nonetheless, in addition to the killing of at least 5,749 members of the protected group, the Chamber considers the following, in particular, to be evidence on which it has inferred the intent to destroy the group in relation to the underlying acts of Article 4(2)(b) and 4(2)(c); the pattern of verbal abuse on account of affiliation with the Islamic faith inflicted by Bosnian Serb Forces on the Bosnian Muslims gathered in Potočari and the Bosnian Muslim men during their detention in Bratunac and Zvornik and up until they were killed;[3213] the persistent capture of the Bosnian Muslim men from the column; the almost simultaneous implementation of the operations to kill the men from Srebrenica and the forcible transfer of the Bosnian Muslim women, children and elderly out of Potočari, Judge Nyambe dissenting; the forcible transfer of the Bosnian Muslim population from Žepa and the murder of three of its most prominent leaders Judge Nyambe dissenting; and the deliberate destruction of the mosques of Srebrenica and Žepa and the homes of Bosnian Muslims Judge Nyambe dissenting, following the fall of the respective enclaves. The Chamber, Judge Nyambe dissenting in part, has no doubt that the Bosnian Serb Forces who committed the underlying acts set out in Article 4(2)(a)-(c) intended the physical destruction of the Bosnian Muslim population of Eastern BiH.

3212 *Stakić* Appeal Judgement, para. 55. *See also* Popović Trial Judgement, para. 820.
3213 *See, e.g.*, paras. 313, 378, 522. *See infra* n. 3443.

(ii) Intent to Destroy the Group "in Whole or in Part"

774. The Chamber concurs with the finding made by the Appeals Chamber, as reproduced by the *Popović* Trial Chamber, that the Bosnian Muslims of Eastern Bosnia constitute a substantial component of the entire group, namely, the Bosnian Muslims:

> As has been found by the Appeals Chamber, although the size of the Bosnian Muslim population in Srebrenica before its capture by the VRS was a small percentage of the overall Muslim population of BiH at the time, the import of the community is not appreciated solely by its size. The Srebrenica enclave was of immense strategic importance to the Bosnian Serb leadership because (1) the ethnically Serb state they sought to create would remain divided and access to Serbia disrupted without Srebrenica; (2) most Muslim inhabitants of the region had, at the relevant time, sought refuge in the Srebrenica enclave and the elimination of the enclave would accomplish the goal of eliminating the Muslim presence in the entire region; and (3) the enclave's elimination despite international assurances of safety would demonstrate to the Bosnian Muslims their defencelessness and be "emblematic" of the fate of all Bosnian Muslims. The Chamber agrees with this analysis and adopts the conclusion.[3214]

775. While the Appeals Chamber made this finding specifically with regard to the Bosnian Muslims of Srebrenica, the reasoning equally applies to the broader population specified in the Indictment, namely "the Bosnian Muslim population of Eastern Bosnia and in particular, the enclaves of Srebrenica, Žepa and Goražde".[3215]

776. In addition to the allegations of the Muslim populations from Srebrenica and Žepa, the Prosecution has alleged that the targeted killings of three Bosnian Muslim leaders from Žepa was a natural and foreseeable consequence of the joint criminal enterprise to forcibly transfer the Bosnian Muslim populations of Srebrenica and Žepa.[3216]

777. The Chamber recalls the Commission of Experts Report which states that if essentially the total leadership of a group is targeted, including political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others, it could also amount to genocide and that the totality per se may be a strong indication of genocide regardless of the actual numbers killed.[3217] The report specified, further, that a corroborating argument will be the fate of the rest of the group; if a large number of the same group are, at the same time, deported or forced to flee, this may be considered a factor in determining whether genocide was committed.[3218] The Chamber further recalls, in this respect, the *Jelisić* Trial Chamber finding that genocidal intent may be manifest in two forms: as well as consisting of the desire to exterminate a very large number of members of the group, genocidal intent may also consist of the desired destruction of a more

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3214 *Popović et al.* Trial Judgement, para. 865 (internal footnotes omitted), summarising findings of the *Krstić* Appeal Judgement, paras. 15–16.
3215 Indictment, para. 10.
3216 Indictment, para. 23.1.
3217 Commission of Experts Report, para. 94 (cited in *Jelisić* Trial Judgement, para. 82).
3218 *See supra* n. 3138.

limited number of persons selected for the impact that their disappearance would have on the survival of the group as such.[3219]

778. The three leaders were Mehmed Hajrić, the Mayor of the municipality and President of the War Presidency, Colonel Avdo Palić, Commander of the ABiH Žepa Brigade, based in and operating out of Žepa, and Amir Imamović, the Head of the Civil Protection Unit.[3220] They were, therefore, among the most prominent leaders of the enclave. Very shortly after the completion of the forcible removal operation in Žepa at the end of July, they were arrested.[3221] Hajrić and Imamović were held for many days in detention separately from other prisoners.[3222] At some point after the middle of August 1995 Bosnian Serb Forces killed them and buried them in the same mass grave.[3223]

779. The Chamber, by majority, Judge Nyambe dissenting, finds that those responsible for killing Hajrić, Palić and Imamović targeted them because they were leading figures in the Žepa enclave at the time that it was populated by Bosnian Muslims. These killings should not be viewed in isolation. As will be discussed in more detail in the Majority's findings concerning the JCE to Forcibly Remove, it is significant to consider the connection between the VRS operations in Srebrenica and Žepa. The respective attacks and takeover of the enclaves were synchronised by the VRS leadership and included the same forces. The takeover of Žepa enclave followed less than two weeks after the capture of Srebrenica, during a time in which news of the murders of thousands of Bosnian Muslim men was starting to spread.

780. While the individuals killed were only three in number, in view of the size of Žepa, they constituted the core of its civilian and military leadership. The mayor—who was also a religious leader—the military commander and the head of the Civil Protection Unit, especially during a period of conflict, were key to the survival of a small community. Moreover, the killing of Palić, who at this time enjoyed a special status as the defender of the Bosnian Muslim population of Žepa,[3224] had a symbolic purpose for the survival of the Bosnian Muslims of Eastern BiH. While

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3219 *Jelisić* Trial Judgement, para. 82. *See also Sikirica et al.* Judgement on Motions to Acquit, para. 77.
3220 *See supra* para. 599.
3221 *See supra* paras. 658, 661–662.
3222 *See supra* para. 665.
3223 *See supra* para. 680.
3224 The Chamber notes in particular the testimony of Esma Palić, who stated that Mladić had offered Avdo Palić to leave Žepa on a number of occasions in the previous years—on one occasion sending him whiskey and cigarettes—because Mladić knew that as long as Avdo Palić was in Žepa, he wouldn't be able to enter the enclave easily: "[n]ot only due to [Palić's] military abilities or skills, [but because] Avdo had this influence on the population of Žepa that made them feel safe, they trusted him." Esma Palić, T. 13293 (26 April 2011). *See also* Ex P02191, examples of correspondence between Avdo Palić and Pećanac, Kušić and Čarkić from 1993 through to April of 1995, concerning the fate of Žepa's population. While the Chamber makes no findings on the contents of this correspondence, it attaches relevance to this correspondence in so far as it supports its finding that Palić was indeed considered to be a central figure in Žepa, and represented its population.

the Majority accepts that the Bosnian Serb Forces did not kill the entirety of the Bosnian Muslim leadership of Žepa, which would have arguably included Hamdija Torlak, the President of the Executive Board of Žepa, it does not consider this to be a factor against its determination that the acts of murder against these three men constitutes genocide. It recalls in this regard Torlak's speculation that he was not killed because his appearance at negotiations with Mladić was well documented on video.[3225] The Majority considers this to be a plausible reason why he was not killed. Moreover, it recalls that when the forcible removal operation of Žepa's population had started, the male population of the enclave was still hiding out in the nearby mountains. The VRS had exhausted its resources on the ground as a result of the operation against Srebrenica and the ensuing engagement in combat with members of the column before opening the corridor. Media attention to the actions of the Bosnian Serbs had started to increase.

781. In accordance with the *Jelišić* Trial Chamber's finding—in which it relied on the Commission of Experts Report—the Majority also takes into account the fate of the remaining population of Žepa;[3226] their forcible transfer immediately prior to the killing of these three leaders is a factor which supports its finding of genocidal intent. To ensure that the Bosnian Muslim population of this enclave would not be able to reconstitute itself, it was sufficient—in the case of Žepa—to remove its civilian population, destroy their homes and their mosque, and murder its most prominent leaders. These three men, similar to the thousands of those murdered following the fall of Srebrenica, also ended up in mass graves.[3227]

782. The Majority has no doubt that the murder of Hajrić, Palić and Imamović was a case of deliberate destruction of a limited number of persons selected for the impact that their disappearance would have on the survival of the group as such. On the basis of the above, the Majority, Judge Nyambe dissenting, is satisfied beyond reasonable doubt that Bosnian Serb Forces killed the three leaders named in the Indictment with the specific genocidal intent of destroying part of the Bosnian Muslim population as such.

E. Conspiracy to Commit Genocide

1. Charges

783. The Indictment charges the Accused with conspiracy to commit genocide pursuant to Article 4(3)(b) of the Statute and alleges that there was an agreement between the Accused and

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[3225] Hamdija Torlak, T. 4408–4409 (25 August 2010).
[3226] *See Jelisić* Trial Judgement, para. 82, cited in relevant part in *supra* n. 3138.
[3227] *See supra* para. 680.

others in the VRS to kill the able-bodied Bosnian Muslim men from Srebrenica and to remove the remaining Muslim population of Srebrenica and Žepa, with the intent to destroy them.[3228]

2. Applicable Law

784. While the ICTY has only addressed conspiracy to commit genocide in one case,[3229] the ICTR has produced a wider body of jurisprudence.[3230] According to the jurisprudence of the ICTY and the ICTR, the concept of conspiracy to commit genocide in the Genocide Convention was adopted from the common law and Article 4(3) of the Statute was taken directly from the Genocide Convention.[3231] The Chamber concurs with the *Popović et al.* Trial Chamber's findings that there are reasonable grounds to follow the common law approach in interpreting conspiracy to commit genocide.[3232]

785. The crime of conspiracy to commit genocide is defined as "an agreement between two or more persons to commit the crime of genocide".[3233] The *actus reus* for the crime of conspiracy to commit genocide is the agreement to commit genocide.[3234] An individual can join a conspiracy at any point before the completion of the underlying crime.[3235] Thus, an accused cannot escape

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3228 Indictment, para. 25.

3229 *See Popović et al.* Trial Judgement, paras. 867–886.

3230 *See Seromba* Appeal Judgement, paras. 207–225; *Nahimana et al.* Appeal Judgement, paras. 893–912; *Ntagerura et al.* Appeal Judgement, para. 92; *Bagosora et al.* Trial Judgement, paras. 2084–2113; *Bikindi* Trial Judgement, paras 404–407; *Kajelijeli* Trial Judgement, paras. 785–798; *Niyitegeka* Trial Judgement, paras. 422–429; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 797–801, 838–841; *Musema* Trial Judgement, paras. 184–198, 937–941; *Kambanda* Trial Judgement, para. 40.

3231 *Popović et al.* Trial Judgement, para. 873. *See also Musema* Trial Judgement, paras. 185, 187 (regarding the crime of conspiracy to commit genocide under Article 2(3)(b) of the ICTR Statute).

3232 *Popović et al.* Trial Judgement, para. 873; *Musema* Trial Judgement, para. 187.

3233 *Seromba* Appeal Judgement, para. 218; *Nahimana et al.* Appeal Judgement, para. 894, quoting *Ntagerura et al.* Appeal Judgement, para. 92. *See also Kajelijeli* Trial Judgement, para. 787; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798; *Musema* Trial Judgement, para. 191.

3234 *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Ntagerura et al.* Appeal Judgement, para. 92.

3235 *Popović et al.* Trial Judgement, para. 872, quoting *United States v. Kissel,* 218 U.S. 601, 607 (1910) ("It is true that the unlawful agreement satisfies the definition of the crime, but it does not exhaust it."); *United States v. Scott,* 64 F.3d 377, 381 (8th Cir. 1995) ("Once a person joins a conspiracy [...] he assumes full liability for the conspiracy even though he joined in the later stages.") (United States v. Hoelscher, 914 F.2d 1527, 1534 (8th Cir. 1990)). *See also Hernandez v. United States,* 300 F.2d 114, 122 (9th Cir. 1962) ("Once it is found that the defendant was connected with the conspiracy, he is equally liable with those who originated and dominated the common scheme, though he joined after its inception and his part was minor and subordinate."); *DPP v. Doot* [1973] A.C. 807 (Viscount Dilhorne) ("a conspiracy does not end with the making of the agreement. It will continue so long as the parties to the agreement intend to carry it out. It may be joined by others, some may leave it."); *DPP v. Doot* [1973] A.C. 807 (Lord Pearson) ("When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed, and the conspirators can be prosecuted even though no performance has taken place. But the fact that the offence of conspiracy is complete at that stage does not mean that conspiratorial agreement is finished with [...] The conspiratorial agreement continues in operation and therefore in existence until it is discharged (terminated) by completion of its performance or by abandonment."; *The Queen v. Perrier* [2008] VSCA 97 ("As contended by the Crown, conspiracy is a continuing offence which lasts as long as it is being performed. It remains a single conspiracy no matter who joins or leaves, as long as there are at least two people at any time acting in combination to achieve the same criminal objective."); *Papalia v. R.*, [1979] 2 S.C.R. 256, 276–277 ("The agreement reached by the co-conspirators may contemplate a number of acts or offences. Any number of persons may be privy to it. Additional persons may join the ongoing scheme while

criminal liability by joining the conspiracy after the original formation of the agreement.[3236] Nor does a withdrawal from the conspiracy exonerate a conspirator, unless he produces affirmative and contemporaneous evidence of his withdrawal.[3237] Finally, a subsequent co-conspirator may be considered as culpable as the initial parties to the agreement.[3238]

786. As an inchoate crime, proof of completion of the underlying crime of genocide is not necessary, as the agreement itself is the essence of the crime.[3239] While the *actus reus* of conspiracy to commit genocide may be proven by evidence of meetings between the parties, direct evidence of such an agreement may often be lacking.[3240] In these instances, an agreement may be inferred from circumstantial evidence such as the conduct of the conspirators.[3241] However, conspiracy to commit genocide must be the only reasonable inference for the Chamber to draw from the evidence.[3242] It is also permissible to infer the existence of an agreement from "coordinated actions by individuals who have a common purpose and are acting within a unified framework".[3243] This evidence must establish beyond reasonable doubt a concerted agreement to act, and not mere similar conduct[3244] or the mere showing of a negotiation in progress.[3245]

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others may drop out. So long as there is a continuing overall, dominant plan there may be changes in methods of operation, personnel, or victims, without bringing the conspiracy to an end. The important inquiry is not as to the acts done in pursuance of the agreement, but whether there was, in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy.").

3236 *See Popović et al.* Trial Judgement, para. 872. *See also United States v. Rea,* 958 F.2d 1206, 1214 (2d Cir. 1992) ("A defendant need not have joined a conspiracy at its inception in order to incur liability for the unlawful acts of the conspiracy committed both before and after he or she became a member"); *United States v. Knowles,* 66 F.3d 1146, 1155 (11th Cir. 1995) ("An individual cannot escape guilt merely because he joined the conspiracy after its inception or because he played a minor role in the total scheme."); *United States v. Scott,* 64 F.3d 377, 381 (8th Cir. 1995) ("Even someone who plays a minor role in a conspiracy may be found guilty.") (*United States v. Tran* 16 F.3d 897, 904 (8th Circ. 1994); *Hernandez v. United States.,* 300 F.2d 114, 122 (9th Cir. 1962) ("He is responsible not only for the acts of the conspirators in furtherance of the conspiracy following his joinder, but also for those that precede it."); *DPP v. Doot* [1973] A.C. 807 (Viscount Dilhorne); *DPP v. Doot* [1973] A.C. 807 (Lord Pearson); *The Queen v. Perrier* [2008] VSCA 97; Papalia v. R., [1979] 2 S.C.R. 256, 276.

3237 *United States v. Caicedo,* 103 F.3d 410 (5th Cir. 1997); *United States v. Phillips,* 955 F. Supp. 622 (W.D. Va. 1997), *aff'd,* 129 F.3d 118 (4th Cir. 1997); *State v. Lucas,* 372 N.W.2d 731 (Minn. 1985); *State v. Peterson,* 881 P.2d 965 (Utah Ct. App. 1994).

3238 *See United States v. Scott,* 64 F.3d 377, 381 (8th Cir. 1995). ("Moreover, a conspirator need not be aware of the activities of all other co-conspirators in order to be convicted of the conspiracy. Therefore, even if defendant joined the conspiracy relatively late, played only a minor role in the conspiracy, and was unaware of some aspects of the conspiracy, he was legally responsible as a co-conspirator for all acts carried out in furtherance of the conspiracy.") (footnote omitted); *Hernandez v. United States.,* 300 F.2d 114, 122 (9th Cir. 1962) ("Moreover, he is liable for the acts of his co-conspirators though he was not aware of the performance of those acts, nor even of the existence of the actors."); *DPP v. Doot* [1973] A.C. 807 (Viscount Dilhorne); *DPP v. Doot* [1973] A.C. 807 (Lord Pearson); *The Queen v. Perrier* [2008] VSCA 97; *Papalia v. R.*, [1979] 2 S.C.R. 256, 276.

3239 *Popović et al.* Trial Judgement, para. 868, referring to *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 193. *See also Nahimana et al.* Appeal Judgement, para. 720.

3240 *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896. *See also Niyitegeka* Trial Judgement, paras. 427–429.

3241 *Nahimana et al.* Appeal Judgement, para. 896; *Bikindi* Trial Judgement, para. 405.

3242 *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896.

3243 *Nahimana et al.* Trial Judgement, para. 1047. *Accord, Nahimana et al.* Appeal Judgement, para. 897.

3244 *Nahimana et al.* Appeal Judgement, para. 898. *See also Popović et al.* Trial Judgement, para. 869.

3245 *Kajelijeli* Trial Judgement, para. 787; *Popović et al.* Trial Judgement, para. 869.

787. Because genocide is a specific intent crime, the accused must possess the intent required for the crime of genocide.[3246] Thus, the *mens rea* required for conspiracy to commit genocide is the intent to destroy in whole or in part a national, ethnical, racial or religious group.[3247]

3. Findings

788. The Prosecution submits there was an agreement to commit genocide as of 12 July 1995 between, among others, Mladić, Krstić, Beara, Radoslav Janković, Popović, Momir Nikolić and Drago Nikolić, and that the Accused subsequently entered into this agreement.[3248]

789. The Chamber notes that paragraph 25 of the Indictment defines the agreement to have been the killing of the able-bodied men from Srebrenica who were captured or surrendered after the fall of Srebrenica on 11 July 1995, as well as the removal of the remaining Muslim population from Srebrenica and Žepa, "with the intent to destroy those Muslims". However, paragraph 25 ends by alleging that "[t]he underlying facts and agreement of the Conspiracy to commit genocide are identical to the facts and agreement identified in the Joint Criminal Enterprise mentioned in the Indictment". Reading this together with paragraph 27, the Chamber interprets the charged conspiracy to be limited to the agreement to kill the able-bodied men from Srebrenica.[3249]

790. For the purpose of establishing whether or not there was a conspiracy to commit genocide, the Chamber must establish that there was an agreement, by two or more persons, to kill the able-bodied Bosnian Muslim men from Srebrenica with the intent to destroy them. Absent direct evidence of such an agreement, the Chamber has considered the available circumstantial evidence. It has considered, in this respect, the level of coordination amongst various layers of the VRS leadership from the very beginning of the implementation of the plan to murder, as discussed elsewhere in this Judgement in more detail, indicating that those involved in the operation were acting in accordance with an agreed course of action. Such evidence includes in the view of the Chamber, Judge Nyambe dissenting in part:

- the conversation held between Popović, Kosorić and Momir Nikolić on the morning of 12 July 1995, just before the start of the third Hotel Fontana meeting, during which Popović told Kosorić and Momir Nikolić that an agreement had been made to single out the military aged men and temporarily detain them in the municipality of Bratunac; when Momir

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3246 *Nahimana et al.* Appeal Judgement, para. 894; *Niyitegeka* Trial Judgement, para. 423.
3247 *Nahimana et al.* Appeal Judgement, para. 894.
3248 Prosecution Final Brief, para. 949.
3249 *See* Indictment, para. 27, which refers specifically and exclusively back to paragraphs 18–26 of the Indictment, and not also to the paragraphs of the Indictment setting out the underlying facts for the JCE to Forcibly Remove.

Nikolić asked Popović what would happen to these men, Popović answered that "all Balijas should be killed";[3250]

- Mladić's statement made at the third Hotel Fontana meeting on the morning of 12 July that the Bosnian Muslims could "survive or disappear";[3251]

- the organised, systematic and indiscriminate manner in which the Bosnian Muslim men were separated in Potočari;

- the coordinated and persistent capture of Bosnian Muslim men from the column starting on 13 July and their detention at various temporary facilities in Bratunac municipality;

- Mladić's order on 13 July to ban and prevent leakage of information to the media concerning in particular the "prisoners of war, evacuated civilians, escapees and similar";[3252]

- the pattern of physical and verbal abuse and mistreatment the Bosnian Muslim men suffered at the hands of Bosnian Serb Forces throughout their detention, including the insufficient provision of water and food, and the seizure and destruction of identification documents;

- communications between Beara, Popović, Momir Nikolić, Drago Nikolić and Obrenović on the late afternoon and evening of 13 July 1995 discussing the planned murder of Bosnian Muslim men held at detentions facilities in Bratunac, in the Zvornik municipality;[3253]

- the intercepted conversation on the evening of 14 July in which Beara discusses "3,500 parcels" yet to be "distributed", referring to the Bosnian Muslim prisoners that were at this time detained in the Zvornik area;[3254]

- telegrams sent from the Zvornik Brigade to the 2nd Battalion command on 15 July ordering that men from the 2nd Battalion should be sent to Ročević "for the execution of prisoners" and a phone call from Chief of Security of the Zvornik Brigade Drago Nikolić following these telegrams that this order had "come from above" and had to be carried out;[3255]

- an intercepted conversation between Beara and Cerović on the morning of 16 July recording a discussion regarding "instructions from above" to conduct "triage" on the prisoners, a

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3250 *See supra* para. 257.
3251 *See supra* para. 259.
3252 *See infra* para. 1055.
3253 *See supra* para. 406.
3254 Ex. P00016a. *See infra* para. 1060.
3255 *See supra* paras. 462–463.

reference to the killings of the Bosnian Muslim men who at that stage were detained at Kula School and Pilica Cultural Centre in Zvornik municipality;[3256]

- the murder of at least 4,970 Bosnian Muslim men by Bosnian Serb Forces in 23 different killing incidents in Potočari, the areas of Bratunac and Zvornik, in Bišina, near Tišća and near Trnovo, within a time period of less than one month;

- the swift and efficient concealment of their bodies through the organisation of the necessary VRS personnel and procurement of the required machinery to transport and bury these bodies;

- the reburial operation of many of these graves in September and October of 1995, initiated by the Main Staff, in a further effort to conceal the commission of these crimes.

4. Conclusion

791. The Chamber recalls its finding that the killing of the Bosnian Muslim men from Srebrenica constituted an underlying act of genocide and was committed with the requisite specific intent to destroy the Bosnian Muslims of Eastern BiH.[3257] The Chamber has, furthermore, found beyond reasonable doubt that by the morning of 12 July, a common plan existed amongst some members of the Bosnian Serb Forces to murder the able-bodied men from the Srebrenica enclave.[3258] The Majority finds that this included the Accused as well as other officers within the VRS leadership. The demonstrated extent of coordination that was required to carry out this plan and the efficiency with which it was implemented leaves the Chamber to conclude that the only reasonable inference to draw from the evidence is that an "agreement between two or more persons to commit genocide" existed, and that as such, Count 2 of the Indictment is established.

F. Forcible Transfer as an Inhumane Act and Deportation

792. The Indictment charges the Accused with deportation and forcible transfer as crimes against humanity pursuant to Article 5(d) and Article 5(i) of the Statute, respectively.[3259] The Indictment also charges the Accused with forcible transfer as an underlying act of persecution pursuant to Article 5(h).[3260]

3256 *See infra* para. 1061.
3257 *See supra* paras. 752, 772–773.
3258 *See infra* para. 1046.
3259 Indictment, paras. 35, 62.
3260 *See infra* para. 845.

1. Applicable Law

(a) Elements of Forcible Transfer and Deportation

(i) *Actus Reus*

793. The crimes of forcible transfer and deportation are substantially similar.[3261] Both are defined by the forced displacement of persons by expulsion or other forms of coercion from an area in which they are lawfully present without grounds permitted by international law.[3262] The distinction between the two crimes lies in the location to which the victims are displaced. For an act to constitute deportation, the displacement of persons must occur across a *de jure* border between States or, in certain circumstances, a *de facto* border between states.[3263] Forcible transfer applies to the movement of persons internally within a national border.[3264]

794. It is not necessary for the victims of forcible transfer or deportation to be civilian.[3265] However, the status of the victims may be relevant to whether the general requirements of Article 5 have been met,[3266] and may be a relevant factor in determining whether the allegations factually meet the definition of the crime alleged.[3267]

a. Forced Character of the Displacement

795. For the crimes of forcible transfer and deportation, there must be a forced displacement of persons carried out by expulsion or other forms of coercion. The term "forced" includes both physical force and the threat of force or coercion. Threats of force or coercion have been found to include those caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment.[3268] The forced character of the

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3261 *Simić et al.* Trial Judgement, para. 123.

3262 *Krajišnik* Appeal Judgement, para. 304; *Stakić* Appeal Judgement, paras. 278, 317; *Krnojelac* Appeal Judgement, para. 218 (regarding forcible transfer as an underlying act of persecution); *Milutinović et al.* Trial Judgement, Vol. I, para. 164; *Brđanin* Trial Judgement, para. 540.

3263 *Krajišnik* Appeal Judgement, para. 304; *Stakić* Appeal Judgement, paras. 278, 300, 308, 317; *Popović et al.* Trial Judgement, para. 892; *Milutinović et al.* Trial Judgement, Vol. I, para. 164; *Brđanin* Trial Judgement, para. 542.

3264 *Stakić* Appeal Judgement, para. 317; *Krnojelac* Appeal Judgement, para. 218 (regarding forcible transfer as an underlying act of persecution); *Popović et al.* Trial Judgement, para. 892; *Milutinović et al.* Trial Judgement, Vol. I, para. 164; *Brđanin* Trial Judgement, para. 542.

3265 *Popović et al.* Trial Judgement, para. 910, referring to the reasoning in *Mrksić and Šljivančanin* Appeal Judgement, paras. 35–44 and *Martić* Appeal Judgement, paras. 272–314. The Chamber held that if the general requirement of Article 5 that an attack must be against a civilian population has been established and there is a sufficient nexus to the alleged crime, there is no additional requirement to prove that the actual victims were civilians. *See supra* para. 697.

3266 *Popović et al.* Trial Judgement, para. 911.

3267 *Ibid. See also Popović et al.* Trial Judgement, para. 926.

3268 *Krajišnik* Appeal Judgement, para. 319 (stating that the creation of "severe living conditions" making it impossible to stay can be sufficient for a coercive act of forcible transfer for deportation); *Stakić* Appeal Judgement, paras. 281–282 (stating that there is no requirement of physical force necessary); *Krnojelac* Appeal Judgement, paras. 229, 233 (stating that threats, the use of force, and fear of violence can affect ability to exercise

displacement is determined by the absence of a genuine choice by the victim in his or her displacement.[3269] In circumstances where a person consents to or requests to be displaced, that consent must be given voluntarily by his or her free will.[3270] The voluntariness of any such consent must be assessed with a view to the surrounding circumstances of the particular case,[3271] including the vulnerability of the victims.[3272]

796. It is the consent of the individual and not of a collective group or official authorities deciding on behalf of a group that determines whether a displacement is voluntary.[3273] An agreement among military commanders or other representatives of the parties in a conflict cannot make a displacement lawful.[3274] Furthermore, assistance by humanitarian agencies, such as UNPROFOR, ICRC, and NGOs, in facilitating transfers or exchanges, does not render an otherwise unlawful transfer lawful.[3275]

b. Lawful Presence

797. It is an element of the crimes of forcible transfer and deportation that the victims must be "lawfully present" in the area from which the forced removal took place. The Chamber concurs with the *Popović et al.* Trial Chamber's pronouncement of the legal definition of "lawfully present", which recently clarified that the words should be given their common meaning and should not be equated with the legal concept of lawful residence.[3276] The prohibition against forcible transfer and deportation protects the right of victims to remain in their homes and communities.[3277] The *Popović et al.* Trial Chamber found that the protection is also intended to include "internally displaced persons who have established temporary homes after being uprooted from their original community".[3278]

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genuine choice); *Simic et al.* Trial Judgement, para. 126 (stating that "a lack of genuine choice may be inferred from, *inter alia*, threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will, such as the shelling of civilian objects, the burning of civilian property, and the commission of—or the threat to commit—other crimes calculated to terrify the population and make them flee the area with no hope of return").

3269 *Stakić* Appeal Judgement, para. 279; *Krnojelac* Appeal Judgement, paras. 229, 233; *Krajišnik* Trial Judgement, para. 724; *Blagojević and Jokić* Trial Judgement, para. 596; *Brđanin* Trial Judgement, para. 543. *See also Simić et al.* Trial Judgement, para. 126; *Krstić* Trial Judgement, para. 147.

3270 *Stakić* Appeal Judgement, para. 279. *See also Krnojelac* Appeal Judgement, para. 233; *Krnojelac* Trial Judgement, para. 475.

3271 *Stakić* Appeal Judgement, paras. 279, 282; *Popović et al.* Trial Judgement, para. 898.

3272 *Blagojević and Jokić* Trial Judgement, para. 596 (regarding forcible transfer as an underlying act of persecution).

3273 *Popović et al.* Trial Judgement, paras. 897, 921; *Simić et al.* Trial Judgement, para. 128.

3274 *Popović et al.* Trial Judgement, para. 897; *Naletilić and Martinović* Trial Judgement, para. 523. *See also Simić et al.* Trial Judgement, para. 127.

3275 *Stakić* Appeal Judgement, para. 286; *Popović et al.* Trial Judgement, para. 897.

3276 *Popović et al.* Trial Judgement, para. 900.

3277 *Stakić* Appeal Judgement, para. 277. *See also Popović et al.* Trial Judgement, para. 900; *Stakić* Trial Judgement, para. 681; *Simić et al.* Trial Judgement, para. 130.

3278 *Popović et al.* Trial Judgement, para. 900.

c. Grounds Permitting Forced Displacement under International Law

798. International law recognises certain grounds permitting forced removal during times of conflict. Article 19 of Geneva Convention III permits the evacuation of prisoners of war out of combat zones and into internment facilities subject to the conditions set out therein.[3279] Article 49 of Geneva Convention IV[3280] and Article 17(1) of Additional Protocol II,[3281] also subject to specific conditions, allow the forced displacement of a population where it is conducted for the security of the persons involved or for imperative military reasons.[3282] Where an act of forced removal is

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3279 Article 19 of Geneva Convention III states:

> Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger. Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone. Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

3280 Article 49 of Geneva Convention IV states:

> Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.
>
> Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.
>
> The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.
>
> The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.
>
> The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.
>
> The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

3281 Article 17 of Additional Protocol II states:

> (1) The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
>
> (2) Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

3282 *See Stakić* Appeal Judgement, paras. 284–285; *Popović et al.* Trial Judgement, paras. 901–903; *Milutinović et al.* Trial Judgement, Vol. I, para. 166; *Blagojević and Jokić* Trial Judgement, para. 597. *See also* Commentary on Geneva Convention IV, p. 280. With regard to "imperative military reasons", the Commentary on Geneva Convention IV specifically defines:

> If therefore an area is in danger as a result of military operations or is liable to be subjected to intense bombing, the Occupying Power has the right and, subject to the provisions of Article 5 [derogations], the duty of evacuating it partially or wholly, by placing the inhabitants in places of refuge. The same applies when the presence of protected persons in an area hampers military operations. Evacuation is only permitted in such cases, however, when overriding military considerations make it imperative; if it is not imperative, evacuation ceases to be legitimate.

The Commentary on Additional Protocol II further defines that "imperative military reasons [...] as a ground for derogation from a rule always requires the most meticulous assessment of the circumstances" with reference to Article 49 of Geneva Convention IV. *See supra* n. 3280. In all cases, the commentary notes, the "situation should be scrutinized most carefully as the adjective 'imperative' reduces to a minimum cases in which displacement may be ordered". Commentary on Additional Protocol II, pp. 1472–1473. Further, it is clear that "imperative military reasons cannot be justified by political motives". Commentary on Additional Protocol II, p. 1473.

conducted within the ambit of the law, that act cannot constitute the *actus reus* of the crime of forcible transfer or deportation.[3283]

799. Evacuation is an exceptional measure, the purpose of which is the protection of the civilian population.[3284] It is unlawful to use evacuation measures based on imperative military reasons as a pretext to remove the civilian population and effectuate control over a desired territory.[3285]

800. Furthermore, although forced displacement for humanitarian reasons is justifiable in certain situations,[3286] forced displacement is not justified in circumstances where the humanitarian crisis that caused the displacement is itself the result of the accused's unlawful activity.[3287]

(ii) *Mens Rea*

801. The *mens rea* required for the crime of forcible transfer is the intent to forcibly displace the population within a national border.[3288] The *mens rea* for the crime of deportation is the intent to displace the population across a *de jure* or *de facto* border.[3289] It is not necessary for the Accused to intend to displace the victims on a permanent basis.[3290]

(b) Forcible Transfer as an Inhumane Act under Article 5(i)

802. Article 5(i) is a residual category of crimes of against humanity, which includes serious criminal acts that are not exhaustively enumerated in Article 5.[3291] For an act or omission to fall under this residual category, the Prosecution must prove that: (1) there was an act or omission of similar seriousness to the other enumerated crimes under Article 5; (2) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and (3) the accused or the perpetrator committed the act or omission with the intention of inflicting serious physical or mental suffering on the victim(s) or to commit a serious attack on the human

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3283 *See Stakić* Appeal Judgement, para. 284; *Popović et al.* Trial Judgement, paras. 901–903; *Blagojević and Jokić* Trial Judgement, para. 597.
3284 *Popović et al.* Trial Judgement, para. 901; *Blagojević and Jokić* Trial Judgement, para. 597.
3285 *Ibid.*
3286 *See* Additional Protocol II, Art. 17.
3287 *Krajišnik* Appeal Judgement, para. 308, fn. 739; *Stakić* Appeal Judgement, para. 287; *Popović et al.* Trial Judgement, para. 903.
3288 *Stakić* Appeal Judgement, para. 317. *See also Popović et al.* Trial Judgement, para. 904; *Milutinović et al.* Trial Judgement, Vol. I, para. 164; *Martić* Trial Judgement, para. 111.
3289 *Stakić* Appeal Judgement, para. 278. *See also Popović et al.* Trial Judgement, para. 904; *Milutinović et al.* Trial Judgement, Vol. I, para. 164; *Martić* Trial Judgement, para. 111.
3290 *Brđanin* Appeal Judgement, para. 206; *Stakić* Appeal Judgement, paras. 278, 304, 307, 317; *Popović et al.* Trial Judgement, para. 905; *Naletilić and Martinović* Trial Judgement, para. 520; *Simić et al.* Trial Judgement, paras. 132–134.
3291 *Stakić* Appeal Judgement, paras. 315–316; *Kupreškić et al.* Trial Judgement, para. 563.

dignity of the victim(s), or with the knowledge that his act or omission was likely to cause such suffering or an attack upon human dignity.[3292]

803. The Appeals Chamber has confirmed that acts of forcible transfer may be sufficiently serious as to amount to other inhumane acts.[3293] Specifically, the *Stakić* Appeals Chamber noted the proliferation of international instruments condemning forcible transfer and held that "[t]he notion of forcible transfer had therefore clearly been accepted as conduct criminalised [as early as 1992]".[3294] A Trial Chamber must examine whether the specific instances of forcible transfer in the case before it are sufficiently serious to amount to "other inhumane acts" under Article 5(i).[3295]

2. Findings

(a) Forcible Removal of the Bosnian Muslim Population from Srebrenica

(i) Organised Transport of Women, Children, and Elderly from Potočari

804. The Indictment alleges that on 12 July 1995, Bosnian Serb Forces began loading Bosnian Muslim women, children, and elderly onto buses in Potočari and transporting them to Kladanj; by 13 July 1995, the entire Bosnian Muslim population had been removed from the area.[3296]

805. The Majority finds that from 7 to 9 July repeated VRS shelling into the towns of Srebrenica and Potočari created a tense situation among the Bosnian Muslim population.[3297] With the situation worsening into 10 July, people began to flee to the DutchBat Bravo Company compound in Srebrenica town;[3298] when faced with mortar shelling there, they started moving north to the UN compound in Potočari amidst shelling en route.[3299] On 11 July, Srebrenica fell into the hands of the Bosnian Serb Forces, and all remaining women, children, and elderly, and a small number of men, fled from Srebrenica town.[3300]

3292 *Kordić and Čerkez* Appeal Judgement, para. 117; *Vasiljević* Trial Judgement, para. 236; *Krnojelac* Trial Judgement, para. 132; *Kayishema and Ruzindana* Trial Judgement, para. 153. *See also Simić et al.* Trial Judgement, para. 76.

3293 *See Krajišnik* Appeal Judgement, para. 331; *Stakić* Appeal Judgement, para. 317. *See also Krstić* Trial Judgement, para. 523; *Kupreškić et al.* Trial Judgement, para. 566.

3294 *Stakić* Appeal Judgement, para. 317.

3295 *Krajišnik* Appeal Judgement, para. 331.

3296 Indictment, paras. 47–48. *See also* Prosecution Final Brief, paras. 343–348, 883 (bullet 1). These movements are also charged as persecutions pursuant to Article 5(h). *See infra* 845.

3297 *See supra* paras. 220–225.

3298 *See supra* paras. 228–233.

3299 *See supra* para. 233.

3300 *See supra* paras. 234–240.

806. By 11 July, the people had gathered in Potočari seeking protection at the UN compound.[3301] The Chamber heard numerous accounts of the catastrophic conditions faced by those seeking shelter from 11 to 13 July. Following months of severe convoy restrictions,[3302] there were dangerously inadequate food and medical supplies for the enormous population that had congregated in Potočari.[3303] At the same time, the densely populated area and lack of appropriate facilities created appallingly unhygienic conditions.[3304]

807. On the morning of 12 July, the Bosnian Serb Forces were seen in the hills approaching Potočari, firing weapons, burning homes, and driving out Bosnian Muslim residents along the way.[3305] This terrifying arrival frightened the already traumatised Bosnian Muslim population, especially as the soldiers moved in amongst the crowds and took control of the town.[3306] By the early hours of the afternoon, buses arrived and amidst a chaotic scene Bosnian Serb Forces began loading women, children, and elderly onto the buses, sometimes with force.[3307] At the same time, they callously separated males—some young boys and some elderly—from their families.[3308] By the end of the day, over 9,000 people had been bused out of Potočari.[3309]

808. Those who chose not to board the buses on 12 July endured an evening of "hell".[3310] The sleepless night was suffused with hunger and uncertainty as the crowd was assaulted by the sounds of moaning, screaming, and gunshots.[3311] Bosnian Serb Forces roamed the crowds and continued to take men away from their families.[3312] The situation was so dire that it drove some Bosnian Muslims to escape by committing suicide;[3313] the remainder of the population boarded buses the next day. By the end of the day on 13 July 1995, all of the approximately 25,000–30,000 Bosnian Muslims in Potočari had been transported away, save the wounded.[3314]

809. On the basis of these findings, and the totality of evidence in this case, the Majority is satisfied that the Bosnian Muslims in Potočari were forcibly displaced through the coordinated actions of the Bosnian Serb Forces. The evidence shows that the process of transfer included elements of both physical force and a coercive environment. While the evidence is that some were

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3301 *See supra* para. 241.
3302 *See supra* para. 196.
3303 *See supra* paras. 197–204, 242.
3304 *See supra* para. 242.
3305 *See supra* para. 264.
3306 *See supra* paras. 264–265.
3307 *See supra* paras. 275–278.
3308 *See supra* para. 280.
3309 *See supra* para. 282.
3310 *See supra* para. 244.
3311 *See supra* para. 244.
3312 *See supra* para. 244.
3313 *See supra* para. 244.
3314 *See supra* para. 304.

physically forced onto the buses, all boarded with an absence of genuine choice. As outlined above, the population was "sick, tired, and very scared" and desperate for relief.[3315] In addition to a rapidly deteriorating humanitarian situation brought on by a lack of basic human needs—food, water, and shelter, the Bosnian Serb Forces' attacks in the months and days leading up to the busing had intimidated the civilian population. On 12 and 13 July there was constant terror posed by the Bosnian Serb Forces present in the crowd who were issuing threats and taking loved ones from their families for unknown fates. Driven by fear, those who did not leave the first day rushed to board the buses on 13 July; as told by one witness, "they just wanted to get out of this place where they knew that nothing good was going to happen to them".[3316] The Bosnian Serb Forces left no option for the Bosnian Muslim population to return to their homes in other areas of the Srebrenica enclave and provided no option to stay in Potočari without facing certain death. The movements of the people who boarded the buses were based on their only hope of survival.

810. The Accused argues that the civilian population wanted to leave the Srebrenica enclave and it was UNPROFOR who facilitated such "evacuation", rather than the VRS.[3317] The Chamber notes the Accused's reliance on Exhibit D00174—a cable-code sent by Akashi to Annan at the UN headquarters in New York on 11 July 1995—in which Akashi informed Annan, *inter alia*, that "[f]ollowing consultations with the Bosnian government, and in order to avoid a continuing humanitarian catastrophe, agreement will be solicited from the Bosnian Serbs to allow all residents of Srebrenica, including all men, to leave for Tuzla if they so wish".[3318] However, the Majority recalls that under international humanitarian law, "forced displacement is not justified in circumstances where the humanitarian crisis that caused the displacement is itself the result of the accused's unlawful activity".[3319] Kingori testified that the movements of the Bosnian Muslim people were "a reaction to an already-existing problem caused by the [Bosnian Serb Forces]" leaving them "no alternative".[3320]

811. The evidence indicates that as early as 9 July 1995, the population was "streaming into Srebrenica village, itself, thinking that it was safer";[3321] over the course of 10–11 July, the population continued to move into Srebrenica town and, after being shelled there, moved to

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3315 *See supra* para. 248.
3316 Mirsada Malagić, T. 10033 (16 February 2011).
3317 *See* Accused Closing Argument, T. 19508–19512 (22 August 2012); Ex. D00174, p. 2. *See also* Ex. P01008, pp. 19–22, 26–27; Ex. P00023.
3318 *See* Accused Closing Argument, T. 19509–19511 (22 August 2012); Ex. D00174, p. 2. In this regard, the Chamber also notes correspondence of 11 July 1995 indicating that DutchBat was to "[e]nter into local negotiations with [VRS] forces for immediate ceasefire" and "[t]ake all reasonable measures to protect refugees and civilians in your care". Ex. P01463, p. 2.
3319 *See supra* para. 800.
3320 Joseph Kingori, T. 5533–5534 (16 September 2010). *See also supra* para. 223.
3321 Joseph Kingori, T. 5534 (16 September 2010).

Potočari.[3322] By 12 July 1995, the tens of thousands of Bosnian Muslims who were gathered in Potočari were "surrounded by tanks, mortars and other small caliber weapons" and the "issues of medical treatment, water, fear and exhaustion [made] the situation more difficult".[3323] In the Hotel Fontana meetings, Mladić issued warnings that if NATO airstrikes continued, he would shell the UN compound in Potočari taking note of the massive number of civilians gathered there.[3324] Following the meetings, DutchBat Commander Karremans clearly relayed to UNPROFOR HQ that the situation had reached a point where he was unable to defend the people or even his own battalion.[3325] In the case of the Srebrenica enclave, by 12 July 1995, any necessity to move the population was the direct result of conditions created by the Bosnian Serb Forces—namely restriction of goods to the enclave that created a dire humanitarian situation and ongoing attacks with further threats to bring harm to the civilian population.

812. The Chamber finds that these people who gathered in and around the UN compound were lawfully in Potočari from 11 to 13 July and the Majority finds there were no grounds for this forcible removal of the population under international law. Military actions had ceased in the area thereby negating a need for a military evacuation.

813. The Majority also finds that the evidence establishes beyond reasonable doubt that the Bosnian Serb Forces possessed the intent to forcibly displace the Bosnian Muslims from the Srebrenica enclave to ABiH-held territory within the BiH. As established in the findings on the elements of Article 5, the intent to separate the ethnic groups of BiH existed from as early as 1992.[3326] By March 1995, there was a clear RS directive to target the Bosnian Muslim population to create "an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa".[3327] Following months of restrictions in 1995 and calculated attacks on the civilian population in early July, the Bosnian Muslims of Srebrenica had clustered into a small area of the enclave;[3328] it was at that time that the Bosnian Serb Forces seised the opportunity to move the entirety of the vulnerable population to other areas of BiH in accordance with their plan.

814. Mladić held three meetings between 11 and 12 July at the Hotel Fontana specifically convened to discuss the fate of those gathered in Potočari.[3329] In these meetings, Mladić and other

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3322 *See supra* para. 233.
3323 Ex. P01464, p. 2. *See also supra* paras. 241–244, 262–265.
3324 Ex. P01463, p. 3.
3325 Ex. P01463, p. 4.
3326 *See supra* para. 702.
3327 *See supra* para. 705.
3328 *See supra* paras. 706–707.
3329 *See supra* para. 245.

VRS members present were made keenly aware of the humanitarian situation and the increasing desperation of the group.[3330] Mladić's ovations of helping the population were belied by his simultaneous threats that DutchBat and the Bosnian Muslim population can "all leave, all stay, or all die here".[3331] By 10:00 a.m. on 12 July, before the third meeting at the Hotel Fontana, the buses were already arranged with a planned and cleared route to Kladanj.[3332] In the meeting, Mladić told the Bosnian Muslim participants that they could choose whether to stay or go, but couched such choice in a threat that they could "survive or disappear".[3333]

815. The Chamber established that many senior-ranking members of the Bosnian Serb Forces were on the ground from 12 to 13 July and witnessed the humanitarian situation rendering the civilian population vulnerable.[3334] By mid-day on 12 July when the buses were arriving, an intercepted conversation highlighted the clear intent of the Bosnian Serb Forces to exploit the situation as Mladić stated: "we'll evacuate them all, those who want to and those who don't want to".[3335] The actions of the Bosnian Serb Forces on 12–13 July—pushing and shouting at the people to get on buses—demonstrate the fulfillment of such intent.[3336]

816. The Chamber recalls that on 17 July, the VRS sought to legitimise the transfers by producing a document to be signed by Nesib Mandžić, one of the Bosnian Muslim civilians present at the Hotel Fontana meetings; the document was meant to reflect the meetings held on 11 and 12 July and indicated that it was the wish of the Bosnian Muslims to be evacuated.[3337] However, the Majority holds that this document cannot indicate the consent of each Bosnian Muslim civilian as Mandžić was not an official representative of the Bosnian Muslim population in Potočari and he was subject to extremely coercive conditions at the Hotel Fontana meetings.[3338] Further, as found above, even if leaving was a collective wish,[3339] it was based on an absence of any other genuine choice; the contents of the declaration indicate no more than the desire of the Bosnian Muslim population to escape the intolerable living conditions imposed upon them. The vulnerable population of women, children, and elderly had no real chance to negotiate something other than the buses that arrived with a pre-determined destination. This 17 July document, produced days after the masses had been removed, was simply a superficial attempt to justify these actions taken

3330 *See supra* paras. 245–261.
3331 *See supra* para. 247.
3332 *See supra* paras. 268–271.
3333 *See supra* paras. 259–260.
3334 *See supra* paras. 243–244, 262–267, 275–284.
3335 *See supra* para. 276, n. 1148.
3336 *See supra* para. 278.
3337 *See supra* paras. 302–303.
3338 *See supra* paras. 250–251, 254–255, 258–259. In correspondence of 12 July 1995, Karremans indicated that he was unable "to find suitable representatives among the civilians because the official authorities are for certain reasons not available". Ex. P01463, p. 4.
3339 *See supra* para. 244.

by the Bosnian Serb Forces. This effort to put a legitimate façade on their actions confirms that the Bosnian Serb Forces were fully aware that their actions in forcibly removing the population were impermissible under international law and would be perceived as such by the international community.

817. Given the above findings, the Majority, Judge Nyambe dissenting, is satisfied that Bosnian Muslim civilians gathered in Potočari, almost entirely women, children, and elderly, were forcibly transferred from Potočari.

(ii) Organised Transport of Men from Potočari and Those from the Column

818. The Prosecution alleges that when the boarding of buses began in Potočari on 12 July 1995, able-bodied Bosnian Muslim men were separated out and forcibly transferred to temporary detention sites in Bratunac.[3340] It further alleges that "on 13 July 1995, approximately 5,000 to 6,000 Bosnian Muslim men from the column of men escaping from the Srebrenica enclave were captured by or surrendered to MUP and VRS forces".[3341]

819. The Chamber established that at least 1,000 Bosnian Muslim males—men and boys—in Potočari were separated from the masses by the Bosnian Serb Forces and detained at the White House on 12 and 13 July.[3342] These Bosnian Muslim males were transported on buses towards Bratunac on these days.[3343] The Chamber has also found that at least one man was murdered while still in Potočari.[3344]

820. It has also been established that when Srebrenica fell on 11 July, men who had gathered in Šušnjari made the decision to form a column to set out for Tuzla.[3345] The column of approximately 10,000 to 16,000 people was largely comprised of able-bodied men, including ABiH soldiers and a small number of women, children, and elderly.[3346] On 12 and 13 July, thousands of Bosnian Muslim men were captured from this column or surrendered to the Bosnian Serb Forces.[3347] Like the men from Potočari, they were first taken to temporary detention centres.[3348]

3340 Indictment, para. 48; Prosecution Final Brief, paras. 349–353, 378, 883 (bullet 1). These movements are also charged as persecutions pursuant to Article 5(h). *See infra* para. 845.
3341 Indictment, para. 49; Prosecution Final Brief, paras. 378, 883 (bullet 2). These movements are also charged as persecutions pursuant to Article 5(h). *See infra* para. 845.
3342 *See supra* para. 293.
3343 *See supra* para. 293.
3344 *See supra* para. 309.
3345 *See supra* paras. 230, 237–240.
3346 *See supra* para. 240.
3347 *See supra* paras. 315–321.
3348 *See, e.g., supra* paras. 322–341.

821. However, the Chamber finds that the intent of the Bosnian Serb Forces was not to forcibly expel these men to other areas within the meaning of the crime of forcible transfer, but rather, to move the men to locations where they would be murdered. A plan to kill the Bosnian Muslim men and boys was already discussed among the VRS members on the morning of 12 July,[3349] a time prior to when they were moved from Potočari or captured from the column. Further, the men who were transported were moved to a variety of locations in the Bratunac and Zvornik areas and were subsequently killed—many within hours of their arrival.[3350] Further evidence of a plan to kill the Bosnian Muslim men is shown in that those who did board buses to Kladanj were separated out en route and relocated to secondary locations where they were detained or murdered.[3351]

822. Lacking the requisite intent of forcible transfer, the Chamber cannot make a finding that the Bosnian Muslim males taken from Potočari and those taken from the column were forcibly transferred. Therefore, the Chamber makes no finding on the remaining elements of the crime.

(b) Forcible Removal or Deportation of the Bosnian Muslim Population from Žepa

(i) Organised Transport of Women, Children, and Elderly from Žepa

823. The Indictment alleges that transportation of Bosnian Muslims in Žepa began on 25 July 1995 when they were taken on buses and trucks to other areas of BiH.[3352]

824. The Chamber has found that, from early July, the Bosnian Serb Forces had commenced attacks on the Žepa enclave.[3353] With the fall of Srebrenica, those in Žepa fell into a panic and chaos ensued among the civilian population.[3354] The extreme fears of the people led Avdo Palić to request their protection from UNPROFOR.[3355]

825. The Chamber established that a series of meetings was held in July between the VRS and Bosnian Muslim representatives regarding the "evacuation" of the civilian population.[3356] At the first meeting on 13 July, the Accused told the Bosnian Muslim representatives: "Srebrenica has fallen and now it's Žepa's turn. We can go about it in two ways. What I'm offering you is for all of you to leave Žepa, to be evacuated, get on the buses and leave".[3357] The only alternative offered was

3349 *See supra* para. 257.
3350 *See supra* Chapter V. C., Chapter V. D., Chapter V. E.
3351 *See supra* paras. 282, 310–314.
3352 Indictment, para. 57; Prosecution Final Brief, para. 883 (bullet 3). These movements are also charged as persecutions pursuant to Art. 5(h). *See infra* para. 845.
3353 *See supra* para. 600.
3354 *See supra* para. 603.
3355 *See supra* para. 603.
3356 *See, e.g., supra* paras. 604–611, 617–620, 623–624, 629–638.
3357 *See supra* para. 607.

military action.[3358] When the offer of "evacuation" was rejected, the Bosnian Serb Forces began shelling the Žepa enclave.[3359] Under attack and hearing initial reports of events in Srebrenica, the crowd panicked and began to flee to Stitkov Dol and the Žepa Mountain.[3360]

826. On 24 July, an agreement was reached by the VRS and Bosnian Muslim representatives, in which the civilian population would be "evacuated" upon the conditions of a cease-fire.[3361] Upon hearing the news, those who had fled to mountainous areas of the enclave began to return to Žepa for the "evacuation".[3362] Starting on 25 July, Bosnian Muslim civilians were loaded onto buses and taken to Kladanj.[3363] VRS officers, including the Accused, were on the ground at the time of transport;[3364] their armed presence created an atmosphere of fear and intimidation amongst the already weary population.[3365] The busing continued on for three days and by the end of 27 July, the civilian population—nearly 4,400 people[3366]—had been removed from Žepa.[3367]

827. On the basis of these findings, and the totality of evidence in this case, the Majority is satisfied that the Bosnian Serb Forces forcibly displaced these Bosnian Muslims from Žepa. Through threats, military attacks, and previous actions in restricting goods to the enclaves, the Bosnian Serb Forces created a coercive environment that left those in Žepa without a genuine choice. While the 24 July 1995 Agreement stipulated that "the civilian population of Žepa shall be given the freedom to choose their place of residence while hostilities continue",[3368] this language became mere window-dressing as the events on the ground left the people with only one choice, to board the buses. This absence of genuine choice was recounted by witnesses who told the Chamber that they did not want to leave, but felt they had to as it was unsafe to stay.[3369] Further, the Bosnian Serb Forces intimidated the crowd indicating that there was no hope for them to survive in Žepa. Mladić, in particular, issued direct threats to the civilians, telling groups on the buses that he was "giving them their life as a gift".[3370]

828. The Chamber finds that the Bosnian Muslims who were forcibly transferred from Žepa were lawfully present and the Majority finds that there were no grounds for this forcible removal of the population under international law. Point 1 of the 24 July 1995 Agreement ensured that there would

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3358 *See supra* para. 609.
3359 *See supra* para. 612.
3360 *See supra* para. 614.
3361 *See supra* paras. 629–633.
3362 *See supra* para. 639.
3363 *See supra* para. 645.
3364 *See supra* paras. 641–643, 647–648.
3365 *See supra* para. 643.
3366 *See supra* paras. 649.
3367 *See supra* para. 645–649.
3368 *See supra* para. 630.
3369 *See supra* para. 647.

be a final cessation of hostilities to be "implemented immediately".[3371] Therefore, on 25 July 1995 when the transportation of the Bosnian Muslim civilians started, the contracted cessation of hostilities negated the need for a military evacuation of the population in Zepa.

829. As in Potočari, any need to evacuate the population due to a humanitarian situation would have arisen from the Bosnian Serb Forces' own actions in restricting much-needed supplies and by the VRS's continued shelling and threats of attack. By May 1995, the situation in Žepa was already deteriorating to the point where many wanted to leave.[3372] As recalled by Hamdija Torlak, "[p]eople wanted to leave because they were under a siege. It's only natural they wanted to leave".[3373] Throughout July, the Bosnian Serb Forces repeatedly invited the Žepa War Presidency to meetings to "evacuate" the population; however, the only offered alternative to such movements was further attack.[3374] Coming on the heels of Srebrenica's fall, the Žepa War Presidency was hesitant to accept any agreement for fear of the lives of the able-bodied men.[3375] The VRS response to the non-agreement of its demands was to shell the Žepa enclave repeatedly between 14 and 19 July 1995.[3376] On 19 July 1995, the VRS once again made demands for an "evacuation" of the population with a "surrender" of the Bosnian Muslim men,[3377] but fearing the worst, the Žepa War Presidency could not agree and drafted a contingency plan that would ensure the safety of the lives of both the ABiH Žepa Brigade soldiers and the civilians in the enclave.[3378] The Majority takes particular note of Izetbegović's closing words in a letter to Rasim Delić on 18 July 1995, stating, "I pray to God that we defend Žepa and that this plan remains only on paper".[3379]

830. The VRS resumed attacks on the enclave from 20 to 24 July 1995.[3380] Amidst these attacks, the humanitarian situation was growing steadily worse for the Bosnian Muslim civilians in the Žepa enclave.[3381] Further, a great fear had pervaded the population—arising both from news of the events that had taken place in Srebrenica and from an increased inability to protect themselves.[3382] By 25 July 1995, the population was, in the view of the Majority, so weakened by the actions of the

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3370 *See supra* para. 648.
3371 *See supra* para. 630.
3372 *See supra* para. 202.
3373 Hamdija Torlak, T. 4607 (30 August 2010). At that time, at least 65% of the population of the Žepa enclave was persons who had already been displaced from other villages in the RS and, given the lack of resources, the majority of them were living in "very poor conditions". Ex. D00099, p. 1. At that time, such requests to leave were opposed by ABiH, who sought to keep able-bodied men in Žepa to protect the civilians who were to remain. Hamdija Torlak, T. 4608 (30 August 2010); Ex. D00100.
3374 *See, e.g., supra* paras. 272–287.
3375 *See, e.g., supra* paras. 610, 618, 635.
3376 *See, e.g., supra* paras. 612–616.
3377 *See supra* paras. 617–618.
3378 Ex. D00106. *See also* Ex. D00054.
3379 Ex. D00106.
3380 *See supra* paras. 625–628.
3381 Ex. P00580, p. 1.
3382 *See supra* paras. 603, 614.

Bosnian Serb Forces that there was a true absence of choice as to whether the Bosnian Muslim civilians could stay or go. As summarised by Esma Palić, "No. It wasn't the choice of anyone. It was Ratko Mladić's decision".[3383] From this totality of these coercive conditions—enduring repeated attacks, starving for resources, and suffering great fear—it was only logical that the Bosnian Muslim civilians welcomed the possibility to board buses to leave the enclave. This was not the will of the population, but rather the absence of any other genuine choice.

831. Further, the Majority finds that the jurisprudence is clear that such "evacuation" agreements reached by the Bosnian Muslim representatives could not make the transfers of an entire population legitimate.[3384] With regard to Žepa, those involved in the negotiations were not authorised representatives and this was known to the VRS.[3385] Further, the 24 July 1995 Agreement could not provide a proper assent of each individual, especially those who indicated they did not want to leave.[3386] In this case, it is clear that those acting as Bosnian Muslims representatives were pressured into a position of signing the 24 July 1995 Agreement under great duress—a document that could provide only a veneer of legitimacy for the movements of the Bosnian Muslim civilians out of Žepa.

832. As with the Srebrenica enclave, the Majority is satisfied that the Bosnian Serb Forces possessed the intent to remove the Bosnian Muslims from the Žepa enclave. The demands of the VRS in negotiations with the Bosnian Muslim representatives of Žepa were clear—disarm the ABiH and move the entire population out of the area. These requests were entirely in line with the overarching goals of the RS leadership to separate the ethnic populations in BiH, which would be realised through actions to expel all Bosnian Muslims from the eastern enclaves.[3387] Capitalising on the fear created by actions in Srebrenica, the Bosnian Serb Forces threatened the Bosnian Muslims population of Žepa into capitulation. The Bosnian Serb Forces knew that the population, who were exhausted and afraid, would be easily coerced to flight by relentless military onslaughts. Taking advantage of this, the Bosnian Serb Forces easily transferred the civilian population to Kladanj in the same manner as employed in Srebrenica. In Srebrenica, however, legitimacy of such actions was only sought after-the-fact;[3388] in Žepa, the VRS carefully cornered the Bosnian Muslim representatives into signing an agreement before the population was transferred. Such foresight indicates that the Bosnian Serb Forces were fully aware of their actions as being illegal under international law and requiring the pretence of legitimate evacuation.

[3383] *See supra* para. 647.
[3384] *See supra* para. 796.
[3385] *See supra* paras. 610, 618, 629.
[3386] *See supra* para. 647.
[3387] *See supra* para. 702.
[3388] *See supra* para. 816.

833. Given the above findings, the Majority is satisfied that Bosnian Muslim civilians gathered in the Žepa enclave, like those in Potočari, were forcibly transferred.

(ii) Forced Movement of the Bosnian Muslim Men from Žepa to Serbia

834. At the outset, the Chamber notes that the Indictment clearly charges the crime of deportation in Count 8 to have been carried out by and through:

> [T]he forced movement of Bosnian Muslim men from Žepa, across the Drina River to Serbia, by means of making life unbearable in the enclave by restricting aid to the enclave and instilling fear and terror in the population by shelling civilian areas and attacking the enclave, as described in paragraphs 51–52 of [the] Indictment.[3389]

835. The Prosecution also makes the same allegation under Count 7 (Forcible Transfer), in that on or about 25 July 1995 hundreds of mostly able-bodied Muslim men fled from Žepa across the Drina River to Serbia "because they feared they would be harmed or killed if they surrendered to the VRS".[3390] However, the Chamber is of the opinion that the Prosecution did not charge the movement of these men as forcible transfer in the alternative. Nowhere in its Pre-Trial Brief or throughout the course of proceedings did the Prosecution put forward such arguments. Moreover, in its Final Brief the Prosecution reiterates the distinction between the forcible transfer of the Bosnian Muslims in Žepa, whose victims were mostly women and children forced onto buses, and the deportation of the men who fled to Serbia.[3391]

836. Based on the foregoing, the Chamber is of the view that the Prosecution intended to charge the movement of men from Žepa across the Drina River as deportation under Count 8 only.

837. The Chamber will now turn to the evidence related to the able-bodied men who fled across the Drina River to Serbia.

838. When, between 25 and 27 July 1995, the Bosnian Muslim civilian population was forcefully transferred out of Žepa,[3392] the able-bodied men of Žepa, including ABiH soldiers who up until then

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[3389] Indictment, para. 62. The preceding paragraphs 51–52 of the Indictment lay out the said attack on the Žepa enclave from 7 to 11 July 1995 and the thereupon following negotiations that took place between the VRS and the Bosnian Muslim representatives of Žepa. Indictment, paras. 51–52.

[3390] Indictment, para. 57.

[3391] Prosecution Final Brief, para. 883 (emphasis added) (footnotes omitted):

> By the end of the forcible-removal operation, the JCE members had driven tens of thousands of Muslims from their homes in Srebrenica and Žepa. The JCE members forcibly removed these people as follows: [...] Žepa Muslims were forced to abandon their homes and leave: (1) on buses and trucks to other Muslim-held areas in BiH or (2) *by fleeing on foot to Serbia (deportation).*

[3392] *See supra* paras. 824–833.

chose to remain hidden in the woods around Žepa, had started to break out of the enclave and fled west through RS territory towards Kladanj or to Serbia, crossing the Drina River.[3393]

839. While the VRS had a series of meetings with the Bosnian Muslim representatives regarding the "evacuation" of the civilian population of Žepa, the negotiations were in deadlock with regard to the fate of the able-bodied men, including the ABiH soldiers, remaining in the enclave.[3394] Whereas the VRS maintained that those men, upon surrendering their weapons, would be exchanged with POWs held by the ABiH, it was the general belief of the able-bodied men that they would not survive if taken prisoner by the VRS.[3395] This fear for their lives was further enhanced after rumours had spread of the executions of the men of Srebrenica and laid the foundation for their decision not to go with their families but to flee instead.[3396] The Majority is therefore satisfied that the able-bodied men of Žepa, including ABiH soldiers, fled the enclave without a genuine choice as they saw no realistic option of survival.

840. With respect to the VRS's intent to deport the men across a border, however, the evidence shows that following the flight of the able-bodied men over the Drina River to Serbia, the VRS attempted to get them back from the Serbian authorities who had captured and detained them.[3397] In the Chamber's opinion, it was the VRS's intention to keep the Bosnian Muslim men on RS territory rather than to expel them across the borders of a State.

841. The Chamber therefore concludes that the VRS's intent to deport these men across a border has not been proven beyond reasonable doubt. Thus, the Chamber makes no finding on the remaining elements of the crime.

(c) Conclusion

842. For the foregoing reasons, the Majority, Judge Nyambe dissenting, finds that the busing of approximately 25,000–30,000 Bosnian Muslims out of Potočari on 12 and 13 July 1995 and nearly 4,400 Bosnian Muslims out of Žepa on 25–27 July 1995 constitutes the crimes of forcible transfer. The victims of these forcible transfers were civilians—almost entirely women, children, and elderly—and these actions were a significant part of the attack against a predominantly civilian population within the meaning of crimes against humanity under Article 5. Further, the massive number of victims and the cruel nature by which the expulsions occurred dictate that these were

3393 See *supra* para. 674.
3394 *See supra* paras. 609–610, 617–619, 625, 629–638, 640.
3395 *See supra* paras. 609–610, 618, 638, 674.
3396 *See supra* para. 614.
3397 *See supra* para. 675.

crimes of a similar seriousness to others enumerated under Article 5 and, thus, those envisioned within the scope of Article 5(i).

843. The Chamber further finds that the crime of forcible transfer is not established for the Bosnian Muslim men and boys transferred to the Bratunac and Zvornik areas; the findings on the murder of these individuals are dealt with in other parts of this Judgement.[3398]

844. Lastly, the Chamber concludes that the crime of deportation is not established for the Bosnian Muslim able-bodied men in Žepa who fled to Serbia.

G. Persecutions

845. The Indictment charges the Accused with persecutions on political, racial, and religious grounds, a crime against humanity, through a variety of underlying acts, including murder, cruel and inhumane treatment, terrorising the civilian population, destruction of personal property and forcible transfer and deportation, in violation of Article 5(h) of the Statute.[3399]

1. Applicable law

846. The crime of persecutions as a crime against humanity consists of an act or omission that discriminates in fact, which denies or infringes upon a fundamental right laid down in international customary or treaty law, and which was carried out deliberately with the intention to discriminate on one of the listed grounds, "specifically race, religion or politics".[3400] While Article 5(h) of the Statute refers to persecutions on "political, racial *and* religious grounds"[3401], these three grounds have been interpreted as alternatives, any one of which suffices for a finding of persecutions.[3402]

(i) Underlying Acts or Omissions

847. Persecutions may encompass different inhumane forms. An act or omission enumerated in other sub-clauses of Article 5,[3403] as well as those which are not listed in the Statute,[3404] may constitute the *actus reus* of persecutions if committed on discriminatory grounds. An act or

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3398 *See supra* Chapter VII. B., Chapter VII. C., Chapter VII. D., Chapter VII. E.

3399 Indictment, para. 34.

3400 *Stakić* Appeal Judgement, para. 327 (citing *Kordić and Čerkez* Appeal Judgement, para. 101); *Blaškić* Appeal Judgement, para. 131; *Vasiljević* Appeal Judgement, para. 113; *Krnojelac* Appeal Judgement, para. 185; *Popović et al.* Trial Judgement, para. 964; *Nahimana et al.* Appeal Judgement, para. 985.

3401 (Emphasis added).

3402 *Tadić* Trial Judgement, para. 713.

3403 *Krnojelac* Appeal Judgement, para. 219; *Popović et al.* Trial Judgement, para. 966.

3404 *Brđanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, para. 323; *Popović et al.* Trial Judgement, para. 966. *See also Kupreškić et al.* Trial Judgement, para. 615(c) ("Persecution can also involve a variety of other discriminatory acts, involving attacks on political, social, and economic rights."); *Semanza* Trial Judgement, para. 349.

omission may be considered discriminatory if the victim is targeted because of his or her membership in a group defined by the accused on the basis of race,[3405] religion or politics.[3406] While persecutions are often comprised of a series of acts or a course of conduct, even a single act may be sufficient to constitute the crime, as long as it "discriminates in fact and is carried out deliberately with the intention to discriminate on one of the listed grounds".[3407]

848. Not every denial or infringement of a fundamental right is sufficiently serious to qualify as a crime against humanity.[3408] For an act or omission to amount to the crime of persecutions, it must constitute a gross or blatant denial of a fundamental right laid down in international customary or treaty law reaching the same level of gravity as other acts or omissions prohibited under Article 5,[3409] whether evaluated in isolation or conjunction with other acts.[3410]

(ii) Discriminatory Intent

849. The crime of persecutions entails a specific *mens rea*: the intent to discriminate on political, racial, or religious grounds.[3411] Thus, persecutions differ from other crimes enumerated under Article 5 by requiring proof of the accused's intent to harm the victim on the basis of his or her affiliation with a particular group.[3412] Although persecutions as a crime against humanity belongs "to the same *genus* as [the crime of] genocide", as both encompass the targeting of persons belonging to a particular group, the *mens rea* for persecutions is distinguishable from that for genocide because the former is not accompanied by the intention to destroy the targeted group.[3413]

3405 The *Brđanin* Trial Chamber held that the concept of "race" includes "ethnicity". *Brđanin* Trial Judgement, para. 992, fn. 2484. *See also Nahimana et al.* Appeal Judgement, paras. 986, 988.

3406 *Stakić* Appeal Judgement, paras. 327–328; *Popović et al.* Trial Judgement, para. 968. The targeted group may be considered to include persons whom the perpetrator assumes belong to the targeted group as a result of their close affiliations or sympathies for the victim group. *Naletilić and Martinović* Trial Judgement, para. 636.

3407 *Vasiljević* Appeal Judgement, para. 113. *See also Blaškić* Appeal Judgement, para. 135.

3408 *Kupreškić et al.* Trial Judgement, para. 618; *Popović et al.* Trial Judgement, para. 966; *Nahimana et al.* Appeal Judgement, para. 985.

3409 *Brđanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, para. 321; *Popović et al.* Trial Judgement, para. 966.

3410 *Blaškić* Appeal Judgement, para. 135; *Krnojelac* Appeal Judgement, paras. 199, 221. *See also Kordić and Čerkez* Trial Judgement, para. 199 (characterising persecution as a "crime of cumulative effect"). In this way, "[a]n act which may not appear comparable to the other acts enumerated in Article 5 might reach the required level of gravity if it had, or was likely to have, an effect similar to that of the other acts because of the context in which it was undertaken". *Stakić* Trial Judgement, para. 736.

3411 *Krnojelac* Appeal Judgement, para. 184; *Stakić* Appeal Judgement, para. 328; *Nahimana et al.* Appeal Judgement, para. 985.

3412 *Blaškić* Appeal Judgement, para. 165; *Tadić* Appeal Judgement, para. 305.

3413 *Kupreškić et al.* Trial Judgement, para. 636 (further stating that "when persecution escalates to the extreme form of wilful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide"). Furthermore, unlike a group targeted for genocide, a group targeted for persecution may be defined in terms of positive or negative criteria. *Kvočka et al.* Appeal Judgement, para. 366; *Kvočka et al.* Trial Judgement, para. 195.

850. It is insufficient that the accused knew that he was acting in a discriminatory manner; it must be shown that the accused consciously intended to discriminate.[3414] Discriminatory intent may be inferred from the accused having knowingly participated in a system that discriminated on political, racial, or religious grounds.[3415] Yet, the general discriminatory nature of an attack against a civilian population does not, on its own, support an inference of individual discriminatory intent[3416] Discriminatory intent may only be inferred from "such a context [where], in view of the facts of the case, circumstances surrounding the commission of the acts or omissions substantiate the existence of such intent".[3417] Such circumstances may include the systematic nature of crimes committed against the targeted group, as well as the general attitude of an accused, as demonstrated by his behaviour.[3418]

(b) Specific Underlying Acts

851. The following acts alleged in the Indictment may constitute the crime of persecutions provided that they are carried out with the requisite discriminatory intent: murder, cruel and inhumane treatment, terrorisation of civilians, destruction of personal property, and forcible transfer and deportation.

(i) Murder

852. Murder can qualify as a crime against humanity pursuant to Article 5(a) of the Statute. The definition of murder, such as would constitute an underlying act of persecution if perpetrated with the requisite discriminatory intent, has been discussed separately.[3419]

(ii) Cruel and Inhumane Treatment

853. The *actus reus* of the crime of cruel and inhumane treatment as persecutions is drawn from the *actus reus* of cruel treatment under Article 3 and of the crime of inhumane treatment under Article 2 of the Statute, both of which consist of "an intentional act or omission [...] which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity."[3420] The accused must also have intended to cause serious mental or physical suffering or injury or a

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[3414] *Brđanin* Trial Judgement, para. 996; *Krnojelac* Trial Judgement, para. 435; *Kordić and Čerkez* Trial Judgement, para. 217.
[3415] *Simić et al.* Trial Judgement, para. 51; *Kvočka et al.* Trial Judgement, paras. 201, 413(e).
[3416] *Brđanin* Trial Judgement, para. 997; *Stakić* Trial Judgement, para. 740 (citing *Vasiljević* Trial Judgement, para. 249); *Krnojelac* Trial Judgement, para. 436.
[3417] *Krnojelac* Appeal Judgement, para. 184. *See also Brđanin* Trial Judgement, para. 997.
[3418] *Kvočka et al.* Appeal Judgement, para. 460.
[3419] *See supra* paras. 713–716.
[3420] *Kordić and Čerkez* Appeal Judgement, para. 39; *Blaškić* Appeal Judgement, para. 595; *Čelebići et al.* Appeal Judgement, para. 424.

serious attack on human dignity, or have known that such suffering or injury or an attack was a probable consequence of the act or omission.[3421]

854. The jurisprudence of the Tribunal confirms that the right to be free from cruel, inhumane or degrading treatment or punishment is recognised in customary international law and enshrined in international human rights instruments. Acts of serious bodily and mental harm have been found to be of sufficient gravity when compared with other crimes enumerated in Article 5 of the Statute so as to constitute persecutions.[3422] A Chamber must analyse the seriousness of the harm or injury on a case-by-case basis, bearing in mind factors including, but not limited to, "the severity of the alleged conduct, the nature of the act or omission, the context in which the conduct occurred, its duration and/or repetition, its physical and mental effects on the victim and, in some instances, the personal circumstances of the victim, including age, gender and health."[3423]

(iii) Terrorisation of Civilians

855. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, which constitute customary international law, each prohibit "acts or threats of violence the primary purpose of which is to spread terror among the civilian population".[3424] Moreover, the perpetration of such acts or threats of violence has been held to constitute criminal conduct punishable under Article 3 of the Statute.[3425]

856. The jurisprudence of the Tribunal indicates that "terrorising civilians" involves the infliction of an act or threat of violence directed against the civilian population or individuals not taking direct part in hostilities with the intent to spread terror among the civilian population,[3426] a crime which falls within the general prohibition of attacks against civilians.[3427] While "extensive trauma and psychological damage form part of the acts or threats of violence," the "actual terrorisation of the civilian population" is not required.[3428] It is sufficient that the primary purpose of the acts or

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3421 *Popović et al.* Trial Judgement, para. 974; *Strugar* Trial Judgement, para. 261.

3422 *Blaškić* Appeal Judgement, para. 143. *See also Kordić and Čerkez* Appeal Judgement, para. 106 (referring to Arts. 6 and 7 of the ICCPR, and Arts. 2 and 3 of the ECHR); *Popović et al.* Trial Judgement, para. 975 (referring, *inter alia*, Arts. 3 and 5 of the UDHR; Arts. 4 and 5 of ACHPR; Arts. 4 and 5 of the AmCHR; Arts. 5 and 8 of the ACHR).

3423 *Popović et al.* Trial Judgement, para. 974, n. 3249 (citing *Kvočka et al.* Appeal Judgement, paras. 581, 584–585; *Kordić and Čerkez* Appeal Judgement, paras. 572–573; *Krnojelac* Appeal Judgement, paras. 108–112; *Mrkšić et al.* Trial Judgement, paras. 525, 537–539; *Krnojelac* Trial Judgement, paras. 146–165; *Čelebići* Trial Judgement, paras. 554–558).

3424 *Galić* Appeal Judgement, paras. 87, 102.

3425 *Galić* Appeal Judgement, paras. 85, 98; *Popović et al.*Trial Judgement, para. 978.

3426 *Milošević* Appeal Judgement, para. 31; *Galić* Appeal Judgement, paras. 100–101; *Galić* Trial Judgement, para. 133.

3427 *Galić* Appeal Judgement, paras. 87–88, 102.

3428 *Galić* Appeal Judgement, paras. 102, 104; *Milošević* Appeal Judgement, para. 35.

threats of violence was to spread terror among the civilian population, although it need not be the sole aim.[3429]

857. Exposure to such acts or threats constitutes a violation of an individual's fundamental right to security of person, which is enshrined in various international and regional human rights treaties.[3430] Thus, the terrorisation of civilians is an act of sufficient gravity to constitute persecutions.[3431]

(iv) Destruction of Personal Property

858. While various legal instruments protect the right to property,[3432] this right is not absolute, and its enjoyment is subject to certain limitations.[3433] Both customary international law and treaty law prohibit various forms of destruction of property, where such destruction is not justified by military necessity.[3434] Article 53 of Geneva Convention IV prohibits the "destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons [...] except where such destruction is rendered absolutely necessary by military operations". Similarly, Geneva Conventions I, II and IV label the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" as grave breaches.[3435] The different forms of destruction of property criminalised under the Statute are also limited to destruction that is not justified by military necessity.[3436]

859. The destruction of property, depending on the type of property, the nature and the extent of the destruction, may constitute an underlying act of persecutions, so long as the destruction is intentional and has a severe impact on the victim.[3437] For example, where the destruction of

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3429 *Galić* Appeal Judgement, para. 104 (noting that this purpose can be inferred from the circumstances of the acts or threats, such as their nature, manner, timing, and duration); *Milošević* Appeal Judgement, para. 37.

3430 *Popović et al.* Trial Judgement, para. 981 (citing Art. 3 of the UDHR; Art. 9 of the ICCPR; Art. 6 of the ACHPR; Art. 7 of the AmCHR; Art. 5 of the ECHR; and Art. 14 of the ACHR).

3431 *Popović et al.* Trial Judgement, para. 981 (noting the protection of civilians—through the prohibition of attacks targeting them, as well as indiscriminate attacks on cities, towns, and villages—is a principle of customary international law). *See also Blaškić* Appeal Judgement, para. 159 ("[A]ttacks in which civilians are targeted, as well as indiscriminate attacks on cities, towns, and villages, may constitute persecutions as a crime against humanity.").

3432 *Blaškić* Appeal Judgement, para. 145 (citing Art. 17(2) of the UDHR; Art. 1 of Protocol I to the ECHR; Art. 21 of the AmCHR; Art. 14 of the ACHPR); *Popović et al.* Trial Judgement, para. 983 (citing Art. 31 of the ACHR).

3433 *Popović et al.* Trial Judgement, para. 983 (citing Art. 29 of the UDHR; Art. 14 of the ACHPR; Art. 21 of the AmCHR; Art. 1 of Protocol to the ECHR; Art. 31 of the ACHR).

3434 *Popović et al.* Trial Judgement, para. 984; *Blagojević and Jokić* Trial Judgement, para. 593. *See also Blaškić* Appeal Judgement, para. 145.

3435 Geneva Convention I, Art. 50; Geneva Convention II, Art. 51; Geneva Convention IV, Art. 147. *See also* Arts. 52, 54(5), and 67(4) of Additional Protocol I; Art. 4(2) and Art. 11(2) of the CPCP; Art. 6 of the CPCP, Protocol II.

3436 Art. 2(d) of the Statute prohibits the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." Art. 3(b) of the Statute prohibits the "wanton destruction of cities, towns or villages, or devastation not justified by military necessity".

3437 *Kordić and Čerkez* Appeal Judgement, para. 108; *Blaškić* Appeal Judgement, paras. 146, 149; *Popović et al.* Trial Judgement, para. 987.

property constitutes "a destruction of the livelihood of a certain population", such destruction may amount to a gross or blatant denial of fundamental human rights.[3438] Even where the destruction of personal property is not justified by military necessity, however, the destruction of certain personal property may still not have a sufficiently severe impact on the victim to reach the threshold of equal gravity as the acts listed in Article 5 of the Statute.[3439]

(v) Forcible Transfer and Deportation

860. The definitions of forcible transfer and deportation, such as would constitute persecutions if perpetrated with the requisite discriminatory intent, have been discussed separately.[3440]

2. Findings

(a) Underlying Acts

(i) Murder

861. Paragraph 34(a) of the Indictment charges the Accused with persecution through "the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons, as described in paragraphs 21, 22, and 23.1 of this Indictment".

862. The Majority, Judge Nyambe dissenting, has found that at least 4,970 Bosnian Muslim men were murdered in 23 different killing incidents in Potočari, in the areas of Bratunac and Zvornik, in Bišina, near Tišća, and near Trnovo.[3441] The Majority also found the foreseeable targeted killings of three Bosnian Muslim leaders of Žepa to constitute murder.[3442] Murder is enumerated as a crime against humanity and is by definition considered to be serious enough to amount to persecutions.

863. The Chamber is further satisfied that the Bosnian Muslim men from Srebrenica were killed with discriminatory intent, an inference drawn not only from the scope and nature of the murders, but also from expressions by Bosnian Serb Forces made towards the Bosnian Muslims shortly before the killings occurred; Bosnian Muslim men were mocked and cursed for their religious

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3438 *Blaškić* Appeal Judgement, para. 146 (quoting *Kupreškić et al.* Trial Judgement, para. 631 in which the Trial Chamber stated that there "may be certain types of property whose destruction may not have a severe enough impact on the victim as to constitute a crime against humanity, even if such a destruction is perpetrated on discriminatory grounds: an example is the burning of someone's car (unless the car constitutes an indispensable and vital asset to the owner")).

3439 *See Popović et al.* Trial Judgement, para. 1001.

3440 *See supra* Chapter VII. F. 1.

3441 *See supra* para. 570.

3442 *See supra* para. 721.

affiliation, referred to as "balijas", a derogatory term for Muslims;[3443] some were forced to sing Serb songs or chant pro-Serb slogans before being killed.[3444] With respect to the three Bosnian Muslim leaders of Žepa, the circumstances of the killing of these men lead the Majority, Judge Nyambe dissenting, to conclude that it was committed with discriminatory intent. Throughout the negotiations on the fate of the able-bodied men in Žepa, Hajrić and Imamović as civilian leaders, and Palić as the ABiH Žepa Brigade Commander, were prominent Bosnian Muslim figures for the VRS.[3445] Soon after signing the 24 July 1995 Agreement under pressure, Hajrić and Imamović fell into the VRS's hands.[3446] They were ultimately taken to Rasadnik Prison and held in a room separate from the other prisoners for a short while until they were removed; they never returned.[3447] Meanwhile, after the last convoy of Bosnian Muslim civilians left Žepa on 27 July, Palić was taken away by VRS soldiers in order to meet Mladić; the following day when asked by UNPROFOR officer Joseph about the whereabouts of Palić, Mladić responded that Palić was dead.[3448] The circumstances of their detention and disappearance were such that it leads the Majority to find that the VRS targeted these men in order to inflict harm upon them on the basis of their status as representatives of the Bosnian Muslims. For these reasons, the Majority is satisfied beyond reasonable doubt that these killings were committed with discriminatory intent.

(ii) Cruel and Inhumane Treatment

864. Paragraph 34(b) of the Indictment charges the Accused with persecutions through "cruel and inhumane treatment of Bosnian Muslim civilians, including murder and severe beatings at Potočari and in detention in Bratunac and Zvornik".[3449]

865. The Chamber has described elsewhere in this Judgement the humanitarian situation in Potočari between 11 and 13 July 1995 and shall not repeat the details of it here in full.[3450] In short, it has found that the approximately 25,000–30,000 Bosnian Muslim women, children, elderly and some men, having sought refuge at the UN compound in Potočari following the fall of Srebrenica

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3443 Slavko Čulić, T. 19316 (15 February 2012) (testifying that "balija" was a derogatory term used for Muslims); Osman Salkić, T. 7874–7875 (22 November 2010) (testifying that "balija" is an offensive term for a Bosnian Muslim). *See, e.g.*, paras. 312, 313, 362, 378, 450, 522, 549.

3444 *See supra* paras. 362, 444.

3445 *See supra* para. 599.

3446 *See supra* paras. 658, 661.

3447 *See supra* para. 665.

3448 *See supra* paras. 662, 666.

3449 The Chamber notes that paragraph 907 of the Prosecution Final Brief, in which it is submitted that "[a]ll of the charged persecutory crimes have been proven beyond reasonable doubt", refers back to, *inter alia*, paragraph 485 of the Prosecution Final Brief, concerning the alleged mistreatment and killing of some wounded and elderly Bosnian Muslim men from Žepa from July 1995 until January 1996 at the Rasadnik Prison. In the view of the Chamber, paragraph 34(b) of the Indictment, however, is limited to the cruel and inhumane treatment of Bosnian Muslim civilians at Potočari and in detention in Bratunac and Zvornik. The Chamber shall therefore not discuss the alleged mistreatments in Rasadnik prison in this section of the Judgement.

3450 *See supra* paras. 241–244.

enclave on 11 July 1995, lacked sufficient food, water and proper sanitation. The Majority finds that the already tense atmosphere of fear and panic prevailing in and around the UN compound was no doubt exacerbated by the takeover of Potočari by Bosnian Serb Forces on 12 July 1995; the acts of physical violence inflicted by these forces on several of the Bosnian Muslim civilians throughout 12 and 13 July;[3451] the frenzy that occurred as buses started to arrive to transport the Bosnian Muslims out of Potočari starting on 12 July; and the systematic separation of men from their families.[3452] There is no doubt in the Majority's mind that these circumstances caused mental suffering of the Bosnian Muslims in Potočari—to the men and the women alike.

866. The Chamber recalls its earlier finding that the men were separated by virtue of the fact that they were Bosnian Muslims; the Majority finds that no attempt was made to distinguish between civilians and individuals who may have taken part in combat.[3453] The separated men were beaten and cursed at; they were detained, in the heat of summer, at the overcrowded White House before being shipped off towards Bratunac in packed buses.[3454] DutchBat officer Rutten testified that one could "smell death" in this house.[3455] At this stage—having been forced to leave behind the personal belongings they carried with them, including their identification documents—these men must have known of the fate awaiting them. DutchBat officer Egbers testified that he tried to communicate with these men that they would be taken to safety in Kladanj; the men made a signal drawing their right forefinger from the left to right side across their neck, indicating to Egbers that they thought they would be killed.[3456] In Bratunac, these men were then put up in several facilities, including buses, together with thousands of men of a similar fate captured from the column in the days immediately after the takeover of Srebrenica.[3457] Before meeting their death in various locations throughout the Bratunac and Zvornik areas, scared, thirsty, and hungry men were insulted and physically mistreated by Bosnian Serb Forces.[3458] At several of these locations, men were removed from the detention facilities, following which the others could hear gunshots, accompanied by screaming and moaning.[3459] This inhumane treatment continued until the men were finally shot; some of the survivors gave harrowing accounts of being led to the site of their execution, observing

3451 *See supra* paras. 243, 244, 278.
3452 *See supra* paras. 275, 277, 280.
3453 *See supra* para. 280; *infra* para. 1068.
3454 *See supra* Chapter V. B. 4. (d).
3455 Johannes Rutten, Ex. P02638, KT. 2150 (5 April 2000).
3456 Vincentius Egbers, Ex. P01142, PT. 2751–2752 (19 October 2006); Vincentius Egbers, T. 7082–7083 (1 November 2010). *See also supra* n. 1216.
3457 *See supra* n. 3148.
3458 *See, e.g.*, paras. 324, 325, 331, 337, 338, 380, 389, 398, 399, 444, 446, 485, 487, 489.
3459 *See, e.g.* paras. 331, 377, 379, 422.

the bodies of those already killed before them, and being beaten and cursed until shot at themselves.[3460]

867. The Majority has no doubt that the Bosnian Muslim population gathered in Potočari between 11 and 13 July, and the Bosnian Muslim men who were separated, captured or surrendered from the column, detained and subsequently executed, suffered cruel and inhumane treatment rising to the gravity required by Article 5 so as to qualify as an act of persecution. The Majority further finds that the treatment described above—and in more detail in the specific sections relating to these events in the Judgement—was inflicted with the required discriminatory intent; the expressions and behaviours of the Bosnian Serb Forces towards the Bosnian Muslims make it clear that their membership in the specific group was the reason for inflicting the cruel and inhumane treatment on them.[3461]

(iii) Terrorising Civilians

868. Paragraph 34(c) of the Indictment charges the Accused with persecutions through "the terrorising of Bosnian Muslim civilians in Srebrenica and Potočari".

869. The Majority incorporates its findings made above and in more detail elsewhere in this Judgement pertaining to the terrifying atmosphere in Potočari between 11 and 13 July 1995.[3462] In addition, the Majority recalls its finding that the approximately 25,000–30,000 Bosnian Muslims who sought refuge at the UN compound in Potočari had endured severe shelling by VRS forces in the period leading up to the fall of Srebrenica on 11 July; they were no doubt terrified for their lives when shells hit the DutchBat Bravo Company in Srebrenica where many had taken shelter.[3463] The Majority in this regard further recalls its finding that both sides of the road on which the stream of Bosnian Muslims, mainly women, children and elderly, made their way to the UN compound in Potočari on that same day, was shelled by the VRS.[3464] The evidence has demonstrated that there were only around 1,000–2,000 able-bodied Bosnian Muslim men present amongst the population of approximately 25,000–30,000 Bosnian Muslims that ultimately gathered in Potočari.[3465] The shelling was indiscriminate, and in the view of the Majority, carried out with the purpose of terrorising an already frightened and vulnerable population. These acts no doubt constitute a gross or blatant denial of a fundamental right, which amounts to an act of persecution under Article 5. Furthermore, the Majority is satisfied beyond a reasonable doubt that the terrorisation of the

3460 *See, e.g.*, paras. 428, 492. *See also supra* nn. 3458–3459.
3461 *See supra* n. 3443.
3462 *See supra* paras. 241–244, 865.
3463 *See supra* para. 230.
3464 *See supra* para. 233.
3465 *See supra* para. 288.

Bosnian Muslim population, first in Srebrenica and then in Potočari, was carried out with the requisite intent to discriminate on political, racial, or religious grounds.

(iv) Destruction of Personal Property

870. Paragraph 34(d) of the Indictment charges the Accused with persecutions through "the destruction of personal property and effects belonging to the Bosnian Muslims".

871. The Chamber notes that the Indictment does not specify the type of personal property and effects of the Bosnian Muslims which are alleged to have been destroyed. It notes, however, that the Prosecution, in its Final Brief, submits that "[a]ll of the charged persecutory crimes have been proven beyond reasonable doubt"[3466] and references to specific paragraphs of the Final Brief which detail, *inter alia,* incidents of destruction of personal belongings and identification documents (IDs),[3467] as well as to the destruction of the mosques and homes of Bosnian Muslims, in Srebrenica and in Žepa, respectively.[3468]

872. The Chamber does not consider the mosques of Srebrenica and Žepa to constitute "personal property" and shall, therefore, limit its discussion below to the destruction of homes of Bosnian Muslims from the enclaves, as well as the destruction of personal belongings and IDs.[3469]

a. Destruction of Personal Belongings and Identification Documents (IDs)

873. The Chamber recalls its finding that the Bosnian Muslim men who were separated from the crowd in Potočari on 12 and 13 July 1995, were forced to drop off their belongings, including their IDs, in a pile in front of the White House, where they were detained before being transported to Bratunac. It found, further, that these belongings and IDs were set on fire by Bosnian Serb Forces on 13 and 14 July.[3470] The Chamber also recalls its finding of the burning of personal belongings in Nova Kasaba, where hundreds of Bosnian Muslim men were detained on the Football Field on 13 July before they were ultimately killed.[3471] There was no militarily justifiable reason for the burning of these belongings.

874. The question before the Chamber, however, is whether the impact on the victims of the burning of these belongings, including IDs rises to the level of equal gravity of other acts enumerated in Article 5 of the Statute. The Chamber finds that the burning of IDs can, under

[3466] Prosecution Final Brief, para. 907.
[3467] Prosecution Final Brief, *see, e.g.,* para. 369.
[3468] Prosecution Final Brief, paras. 377, 846 (concerning Srebrenica) and paras. 462, 470–473 (concerning Žepa).
[3469] The Majority has considered the evidence of the destruction of the mosques in its legal findings concerning Genocide. *See supra* para. 766, n. 3204.
[3470] *See supra* para. 291.

specific circumstances, amount to an act of persecution when it is intended, for example, to prevent a population from returning to their homes following their forcible transfer or deportation. It recalls in this respect the jurisprudence that in order to amount to a gross or blatant denial of fundamental human rights—and therefore be of equal gravity with the crimes enumerated in Article 5—the destruction of property must constitute "a destruction of the livelihood of a certain population".[3472] The example provided by the *Blaškić* Appeals Chamber in this context was the burning of someone's car, where that car constitutes an indispensable and vital asset to the owner.[3473] In the specific circumstances of the case, the Chamber does not consider that the IDs of the Bosnian Muslim men at Potočari and those held on the Football Field near Nova Kasaba qualify as indispensable or vital assets, the destruction of which would result in "a destruction of the livelihood of a certain population". This destruction does not, therefore, rise to the level of equal gravity of the acts listed in Article 5. Rather, in the Majority's view, Judge Nyambe dissenting, this destruction was part of a greater plan to eliminate the existence of the Bosnian Muslim men from the region, some of whom were detained at the White House and on the Football Field and were subsequently executed, as already found by the Chamber,[3474] and therefore constituted an element of the implementation of that plan. Moreover, the Majority recalls its finding of cruel and inhumane treatment as an act of persecution of these men, taking into account, *inter alia,* the impact that the burning of their IDs and personal belongings had on them.[3475]

875. On the basis of the above, the Chamber does not find that the destruction of the belongings and IDs of the Bosnian Muslim men in Potočari and at the Football Field in Nova Kasaba amount to an act of persecution pursuant to Article 5(h).

b. Destruction of Homes of Bosnian Muslims in Srebrenica and Žepa

876. The Majority recalls its finding that Bosnian Serb Forces advancing on Potočari in the morning of 12 July 1995 were burning homes and driving out Bosnian Muslim civilians on their way.[3476] In addition, many Bosnian Muslims who had been forcibly removed from Srebrenica and returned years later found their homes burned to the ground.[3477] Those who gave these accounts were not in the position to testify as to who destroyed their homes. Nevertheless, the Majority, Judge Nyambe dissenting, is satisfied, in the context of the events—namely, the criminal operations to rid the region of Bosnian Muslims by way of forcibly transferring the women, children, and

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[3471] *See supra* para. 339.
[3472] *Blaškić* Appeal Judgement, para. 146 (quoting *Kupreškić et al.* Trial Judgement, para. 631).
[3473] *Ibid.*
[3474] *See supra* para. 568; *infra;* para. 1046.
[3475] *See supra* para. 866.
[3476] *See supra* para. 264.
[3477] *See supra* nn. 3203, 3173.

elderly and killing the men—that the only reasonable inference on the available evidence is that the destruction was carried out by Bosnian Serb Forces in the days leading up to, and the period following, the fall of Srebrenica enclave.[3478]

877. With respect to the destruction of homes of the Bosnian Muslims of Žepa, the Majority found elsewhere in this Judgement that already in early July 1995, when the VRS started its attack on Žepa enclave, over 30 Bosnian Muslim homes in surrounding villages were destroyed.[3479] It also found that following the departure of the Bosnian Muslim population from Žepa at the end of July, VRS soldiers looted and burned houses in the enclave and in the surrounding villages.[3480]

878. The Majority is satisfied that the Bosnian Serb Forces burned or otherwise destroyed the homes of the Bosnian Muslims from Srebrenica and Žepa enclaves with the requisite discriminatory intent. Finally, the Majority also concludes that the destruction of homes, due to the severity of the impact, amounts to an act of persecution under Article 5.

(v) Forcible Transfer and Deportation

879. Paragraph 34(e) of the Indictment charges the Accused with persecutions "by means of the forced busing of the women and children to Bosnian Muslim-controlled territory and the forced busing of the men, separated at Potočari or captured or having surrendered from the column, up to the Zvornik area, where they were ultimately executed, and the deportation of the Bosnian Muslim men from Žepa who were forced to flee from their homes in Žepa to Serbia".

880. The Majority recalls its finding that the forcible transfer of the women, children and elderly from the Srebrenica and Žepa enclaves, respectively, has been established. The Chamber did not, however, find the allegations of forcible transfer of the men who were separated at Potočari and the men who were captured from the column or surrendered to have been established, nor did it find that the flight of the able-bodied men from Žepa to Serbia qualified as deportation.[3481]

881. With respect to the forcible transfer of women, children and elderly out of the enclaves, the Majority is satisfied that Bosnian Serb Forces carried out this criminal operation with the requisite discriminatory intent. Those transported consisted only of Bosnian Muslims. In Potočari, Mladić told UNMO officer Kingori that they would "move the Muslims from here and take them to Tuzla to join their brothers there".[3482] In Žepa, Mladić entered many of the buses full of frightened and

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3478 *See supra* n. 887.
3479 *See supra* para. 600.
3480 *See supra* para. 676. *See also supra* n. 2912.
3481 *See supra* paras. 821, 841.
3482 Joseph Kingori, Ex. P00950, PT. 19253 (13 December 2007).

tired Bosnian Muslim women, children and elderly, and told them they would be transported to Kladanj, adding, amongst others, that he was giving them their life as a gift.[3483] The Majority, Judge Nyambe dissenting, finds that the forcible transfer of women, children and elderly out of the enclaves constitutes a gross or blatant denial of a fundamental right, amounting to an act of persecution under Article 5.

(b) Conclusion

882. The Majority finds that on the basis of the above, Judge Nyambe dissenting in part,[3484] persecutions as a crime against humanity alleged in Count 6 of the Indictment is established.

[3483] *See supra* para. 648.

[3484] Judge Nyambe dissents to all findings on persecutory acts, save for the finding that the Bosnian Muslim men were killed by Bosnian Serb Forces with discriminatory intent, amounting to murder as persecutions.

VIII. FINDINGS ON THE RESPONSIBILITY OF THE ACCUSED

A. Applicable Law: Article 7(1) of the Statute

883. The Indictment charges the Accused, pursuant to Article 7(1) of the Statute, with individual criminal responsibility for having committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of the crimes charged against him in the Indictment.[3485]

1. Committing, including Participating in a Joint Criminal Enterprise

884. The commission of a crime requires proof, first and foremost, that the accused physically or directly perpetrated a crime or caused a culpable omission in violation of criminal law.[3486] The requisite *actus reus* for committing a crime is the accused's participation, physically or otherwise directly, alone or jointly with others, in the material elements of the crime stipulated in the Statute.[3487] The *mens rea* required is that the accused acted with intent to commit the crime, or possessed an awareness of the substantial likelihood that the crime would occur as a consequence of his conduct.[3488] This intent or awareness can be inferred from the circumstances.[3489]

885. The word "committed" referred to in Article 7(1) also includes a form of co-perpetration called Joint Criminal Enterprise ("JCE").[3490] The JCEs charged in the Indictment are the JCE to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves ("JCE to Forcibly Remove") and the JCE to murder the able-bodied Bosnian Muslim men captured from the Srebrenica enclave ("JCE to Murder").[3491]

(a) Submissions of the Parties on JCE

886. The Accused makes several submissions with regard to law of JCE, which can be summarised as follows: JCE cannot be a valid ground of liability because it is neither explicitly nor implicitly defined in the Statute;[3492] JCE cannot be used as a form of liability either as a form of co-

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3485 Indictment, para. 66.
3486 *Tadić* Appeal Judgement, para. 188; *Limaj et al.* Trial Judgement, para. 509; *Nahimana et al.* Appeal Judgement, para. 478.
3487 *Limaj et al.* Trial Judgement, para. 509; *Kordić and Čerkez* Trial Judgement, para. 375. *See also Kayishema and Ruzindana* Appeal Judgement, para. 187.
3488 *Limaj et al.* Trial Judgement, para. 509; *Galić* Trial Judgement, para. 172. *See also Kordić and Čerkez* Appeal Judgement, paras. 29, 112.
3489 *Galić* Trial Judgement, para. 172.
3490 *Tadić* Appeal Judgement, para. 188; *Krajišnik* Appeal Judgement, para. 662.
3491 Indictment, para. 67.
3492 Accused Final Brief, paras. 107–110, 112.

perpetration or other type of individual criminal responsibility;[3493] and the Tribunal "has overstepped its jurisdiction by becoming involved in the progressive development of international law (which is not permissible for a court), instead of applying positive law, the law that was in force at the time of the commission of the crime with which the Accused is charged."[3494] In particular, with respect to the third category of JCE, the Accused specifically submits that the concept of JCE applied by the Tribunal is not in agreement with the concept of co-perpetration as it exists in the statute and jurisprudence of the ICC, and that the Chamber should apply the ICC's approach because it reflects positive international law.[3495] The Accused also submits that the ECCC Trial Chamber dismissed JCE as a form of liability because it did not find sufficient evidence that there is "a similar norm with regard to vicarious liability for crimes committed outside the purpose."[3496]

887. The Chamber notes that the Tribunal's jurisprudence on JCE—including its existence in customary international law, origin in the Statute, and long-standing accord with the jurisdiction of the Tribunal—has been firmly established for many years.[3497] However, the Accused addresses none of this jurisprudence in his submissions. The Majority finds the Accused's submissions in this regard without merit, including the suggestion that the Tribunal should follow the approach of other courts rather than its well-established law.[3498]

(b) Applicable Law on JCE

888. It is settled jurisprudence that there are three categories of JCE.[3499] The first category is a basic form of JCE, where all participants, acting pursuant to a common purpose, possess the same criminal intention.[3500] The second category is a systemic form of JCE which is characterised by the existence of an organised system of ill-treatment.[3501] The third category is an extended form of JCE, involving the liability of a participant in a JCE for a crime beyond the common purpose ("extended crime"), but which is nevertheless a natural and foreseeable consequence of committing the crimes

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3493 Accused Final Brief, paras. 112–117.
3494 Accused Final Brief, para. 111.
3495 Accused Final Brief, paras. 119–120, 124.
3496 Accused Final Brief, para. 123.
3497 *See, e.g. Tadić* Appeal Judgement, paras. 187–193; *Kvočka et al.* Appeal Judgement, paras. 79–80; *Stakić* Appeal Judgement, paras. 100–103; *Milutinović et al.* May 2003 Appeal Decision, paras. 20–21, 41; *Krajišnik* Appeal Judgement, paras. 655–670.
3498 Judge Nyambe agrees that the Tribunal is bound by its jurisprudence, but she does not consider that the Accused's position on the importance of decisions of other courts to be without merit.
3499 *Brđanin* Appeal Judgement, paras. 363–364; *Vasiljević* Appeal Judgement, para. 96; *Milutinović et al.* 21 May 2003 Appeal Decision, paras. 12–30; *Tadić* Appeal Judgement, paras. 195–226. *See also Đorđević* Trial Judgement, para. 1860.
3500 *Kvočka et al.* Appeal Judgement, para. 82; *Vasiljević* Appeal Judgement, para. 97; *Tadić* Appeal Judgement, paras. 196–201. *See also Gacumbitsi* Appeal Judgement, para. 158; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 463; *Krnojelac* Appeal Judgement, para. 84.
3501 *Kvočka et al.* Appeal Judgement, para. 82; *Vasiljević* Appeal Judgement, para. 98; *Krnojelac* Appeal Judgement, para. 89; *Tadić* Appeal Judgement, paras. 202–203.

within the common purpose.[3502] The Indictment charges the Accused with the first and third categories of JCE.[3503]

889. The *actus reus* of a participant in a JCE is the same for all three categories.[3504] The first common element is the requirement of a plurality of persons.[3505] While it is not necessary to identify by name each of the participants, and reference to categories or groups of persons suffices,[3506] the categories must be adequately identified to prevent vagueness or ambiguity.[3507] Furthermore, it is not necessary for the JCE members to be organised in a military, political, or administrative structure.[3508] When using categories or groups of persons to define a plurality, a common objective alone is not always sufficient to determine the group, because different and independent groups may happen to share identical objectives.[3509] As such, it is the joint action among the persons which, in addition to their common objective, forges a group out of a mere plurality.[3510]

890. To convict a JCE member for crimes committed by non-JCE-members, the Prosecution must establish beyond reasonable doubt that the crime or underlying offence can be imputed to one member of the JCE who does not necessarily need to be the accused;[3511] and that the non-members committed crimes which formed part of a common criminal purpose ("first category JCE"); or were a natural and foreseeable consequence of a common criminal purpose ("third category JCE").[3512] The existence of this link is to be assessed on a case-by-case basis.[3513]

891. The second common element is the existence of a common plan, design, or purpose that amounts to or involves the commission of a crime provided for in the Statute.[3514] JCE liability does

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3502 *Stakić* Appeal Judgement, para. 65; *Kvočka et al.* Appeal Judgement, para. 83; *Blaškić* Appeal Judgement, para. 33; *Vasiljević* Appeal Judgement, para. 99; *Krnojelac* Appeal Judgement, para. 89; *Tadić* Appeal Judgement, paras. 202–204.

3503 Indictment, paras. 10, 27, 29, 35, 60–61.

3504 *Brđanin* Appeal Judgement, para. 364; *Kvočka et al.* Appeal Judgement, para. 86; *Vasiljević* Appeal Judgement, para. 100; *Tadić* Appeal Judgement, para. 227. *See also Đorđević* Trial Judgement, para. 1860.

3505 *Vasiljević* Appeal Judgement, para. 100; *Tadić* Appeal Judgement, para. 227.

3506 *Krajišnik* Appeal Judgement, para. 156; *Limaj et al.* Appeal Judgement, para. 99; *Brđanin* Appeal Judgement, para. 430.

3507 *Krajišnik* Appeal Judgement, para. 157.

3508 *Tadić* Appeal Judgement, para. 227; *Stakić* Appeal Judgement, para. 64.

3509 *Gotovina et al.* Trial Judgement, para. 1954.

3510 *Gotovina et al.* Trial Judgement, para. 1954; *Krajišnik* Trial Judgement, para. 884; *Haradinaj et al.* Trial Judgement, para. 139.

3511 *Milutinović et al.* Trial Judgement, Vol. I, para. 99. *See also Brađanin* Appeal Judgement, para. 413.

3512 *Martić* Appeal Judgement, para. 171; *Brđanin* Appeal Judgement, paras. 410, 411, 418.

3513 *Brđanin* Appeal Judgement, para. 413; *Martić* Appeal Judgement, paras. 168–169.

3514 *Krajišnik* Appeal Judgement, para. 704; *Brđanin* Appeal Judgement, para. 390; *Kvočka et al.* Appeal Judgement, para. 81; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227.

not require a previously arranged or formulated common plan, design, or purpose.[3515] Such a plan, design, or purpose "may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise".[3516]

892. The criminal means of realising the common plan, design, or purpose of the JCE can evolve—a JCE can grow to embrace expanded criminal means, so long as the evidence shows that the JCE member agreed on the expansion of means.[3517] It is not necessary to show that the JCE members explicitly agreed to the expansion of criminal means as the necessary agreement may also materialise extemporaneously and be inferred from circumstantial evidence.[3518] Beyond the common plan, design, or purpose, an additional understanding or agreement between the accused and the principal perpetrator(s) of the crime to commit that particular crime is not necessary.[3519]

893. The third common element is the accused's participation in the common design.[3520] This participation can occur directly in the commission of the agreed crime, or by assisting or contributing to the execution of the common purpose.[3521] It is not necessary to prove that the common criminal purpose could not be achieved absent the accused's contribution; in other words, the accused's participation does not need to be *sine qua non*.[3522] It is also not necessary for the accused to be present at the time of commission.[3523] Thus, the accused's contribution to the common purpose does not need to be substantial.[3524] However, at a minimum, the accused's contribution must be "a significant contribution to the crimes for which the accused is found responsible",[3525] although not every type of conduct would amount to a significant enough contribution for the accused to incur criminal liability for the crime committed.[3526] Factors to consider in evaluating whether the accused's level of participation in the JCE was significant include, among others, the size of the criminal enterprise, the functions performed, the accused's position, the amount of time spent participating after acquiring knowledge of the criminality of the system, efforts made to prevent criminal activity or to impede the efficient functioning of the

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3515 *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 96; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227. *See also Đorđević* Trial Judgement, para. 1862.

3516 *Furundžija* Appeal Judgement, para. 119; *Tadić* Appeal Judgement, para. 227. *See also Brđanin* Appeal Judgement, para. 418.

3517 *Krajišnik* Appeal Judgement, para. 163.

3518 *Ibid.*

3519 *Brđanin* Appeal Judgement, para. 418; *Đorđević* Trial Judgement, para. 862.

3520 *Vasiljević* Appeal Judgement, para. 100; *Tadić* Appeal Judgement, para. 227.

3521 *Krajišnik* Appeal Judgement, para. 215; *Tadić* Appeal Judgement, para. 227.

3522 *Kvočka et al.* Appeal Judgement, para. 98. *See also Popović et al.* Trial Judgement, para. 1026.

3523 *Krnojelac* Appeal Judgement, para. 81; *Simba* Appeal Judgement, para. 296.

3524 *Kvočka et al.* Appeal Judgement, para. 97; *Krajišnik* Appeal Judgement, para. 675.

3525 *Krajišnik* Appeal Judgement, paras. 215, 696; *Brđanin* Appeal Judgement, para. 430, *Gotovina and Markac* Appeal Judgement, paras. 89–90.

3526 *Brđanin* Appeal Judgement, para. 427. *See also Đorđević* Trial Judgement, para. 1863.

system, the seriousness and scope of the crimes committed and the efficiency, zealousness or gratuitous cruelty exhibited in performing the actor's function.[3527]

894. It is sufficient for the accused to act or fail to act[3528] "in some way [...] directed to the furtherance of the common plan or purpose".[3529] In this respect, the Chamber notes that the actual physical perpetration of a crime or underlying offence by an accused, which is not required for joint criminal enterprise liability, tends to support a finding that his participation was significant if the crime or underlying offence advanced the goal of the enterprise.[3530] An accused's position of authority and silent approval militate in favour of a finding that his participation was significant.[3531] The question of whether the accused significantly contributed to a JCE is a question of fact to be determined on a case-by-case basis.[3532]

895. The requisite *mens rea* differs for the two categories of JCE relevant to this case. In the first category of JCE, the accused must intend to perpetrate a crime and this intent must be shared by other JCE members.[3533] Under certain circumstances, this intent may be inferred from the accused's knowledge in combination with his continuing participation.[3534]

896. In the third category of JCE, first, the accused must have the intention to participate in and contribute to the common criminal purpose and second, the accused may incur liability for crimes which were not part of the common criminal purpose, and were committed by other participants in the JCE or non-JCE members, if in the circumstances of the case, (i) it was foreseeable that such an extended crime might be committed by one or more of the persons used by him or by another JCE member in order to carry out the *actus reus* of the crimes forming part of the common purpose; and

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3527 *Kvočka et al.* Trial Judgement, para. 311; *Milutinović et al.* Trial Judgement, Vol. I, para. 105.

3528 Omission may lead to individual criminal responsibility under 7(1) where there is legal duty to act. *Brđjanin* Appeal Judgement, para. 274; *Galić* Appeal Judgement, para. 175; *Blaškić* Appeal Judgement, para. 663 (stating that: "There is a further exception to the general rule requiring a positive act: perpetration of a crime by omission pursuant to Article 7(1), whereby a legal duty is imposed, *inter alia* as a commander, to care for the persons under the control of one's subordinates."). The requirements for criminal responsibility for an omission include "(a) the accused must have had a duty to act mandated by a rule of criminal law; (b) the accused must have had the ability to act; (c) the accused failed to act intending the criminally sanctioned consequences or with awareness and consent that the consequences would occur; and (d) the failure to act resulted in the commission of the crime". *Ntagerura et al.* Appeal Judgement, para. 333; *Brđjanin* Appeal Judgement, para. 274, n. 557.

3529 *Tadić* Appeal Judgement, para. 229. *See also Kvočka et al.* Appeal Judgement, para. 190; *Brđanin* Appeal Judgement, para. 427; *Milutinović et al.* Trial Judgement, Vol. I, para. 103.

3530 *Milutinović et al.* Trial Judgement, Vol. I, para. 105.

3531 *Milutinović et al.* Trial Judgement, Vol. I, para. 105; *Kvočka et al.* Appeal Judgement, paras. 101, 192; *Krnojelac* Appeal Judgement, para. 96.

3532 *Krajišnik* Appeal Judgement, para. 696.

3533 *Stakić* Appeal Judgement, para. 65; *Vasiljević* Appeal Judgement, para. 101; *Tadić* Appeal Judgement, paras. 220, 228.

3534 *Krajišnik* Appeal Judgement, para. 697.

(ii) the accused willingly accepted this risk by participating in the JCE with the awareness that such an extended crime was a possible consequence of the implementation of that enterprise.[3535]

897. The *mens rea* standard for the third category of JCE does not require an understanding on the accused's part that the extended crime "would *probably* be committed", but requires that the possibility of the crime being committed is sufficiently substantial as to be foreseeable to an accused.[3536] It does not suffice if the accused merely created the conditions which made the commission of an extended crime possible.[3537] The Prosecution must prove that the accused had sufficient knowledge that the extended crime was a natural and foreseeable consequence of the common criminal purpose.[3538] That is to say, it must be reasonably foreseeable based on the information available to the accused at the time that the crime or underlying offence would be committed.[3539]

898. It is not necessary for the accused to possess the requisite intent for the extended crime.[3540] This is applicable also to specific intent crimes, such as genocide and persecution.[3541] Therefore, the mental state of the person carrying out the *actus reus* of the extended crime is determinative to the finding of what extended crime, if any, has been committed; but it is not relevant for the finding of the mental state of the accused.[3542] Furthermore, the *Popović et al.* Trial Chamber noted that only a crime in itself under the Statute can constitute an extended crime pursuant to the third category of JCE.[3543] Therefore, in that case, a reburial did not legally constitute a foreseeable consequence of the alleged JCE to murder.[3544]

2. Planning

899. The requisite *actus reus* and *mens rea* for planning of a crime are that the accused designed criminal conduct which constitutes one or more crimes as defined by the Statue that are later perpetrated,[3545] with the intent that the crime be committed in the execution of that design, or

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[3535] *Brđanin* Appeal Judgement, para. 411; *Martić* Appeal Judgement, para. 168; *Kvočka et al.* Appeal Judgement, para. 83; *Vasiljević* Appeal Judgement, para. 101; *Tadić* Appeal Judgement, paras. 204, 220, 228. *See also Krajišnik* Appeal Judgement, paras. 225–226; *Karadžić* June 2009 Appeal Decision, para. 15; *Haradinaj et al.* Trial Judgement, para. 137; *Blaškić* Appeal Judgement, para. 33; *Gotovina and Markač* Appeal Judgement, paras. 89–90.

[3536] *Karadžić* June 2009 Appeal Decision, para. 18, referring to *Tadić* Appeal Judgement, para. 204; *Kvočka et al.* Appeal Judgement, para. 86.

[3537] *Martić* Appeal Judgement, para. 83.

[3538] *Kvočka et al.* Appeal Judgement, para. 86.

[3539] *Brđanin* March 2004 Interlocutory Appeal Decision, para. 5; *Martić* Appeal Judgement, para. 83; *Milutinović et al.* Trial Judgement, Vol. I, para. 111.

[3540] *Brđanin* March 2004 Interlocutory Appeal Decision, paras. 5–7.

[3541] *Brđanin* March 2004 Interlocutory Appeal Decision, paras. 6, 9.

[3542] *Popović et al.* Trial Judgement, para. 1031.

[3543] *Popović et al.* Trial Judgement, para. 1032.

[3544] *Ibid.*

[3545] *Kordić and Čerkez* Appeal Judgement, para. 26.

possessing the awareness of the substantial likelihood[3546] that a crime or underlying offence would be committed in execution of the specific design.[3547] This is applicable whether the *mens rea* of the crime is general or specific.[3548]

900. The conduct of planning can be carried out by one person acting alone or with other people.[3549] The plan must have been a factor substantially contributing to criminal conduct constituting one or more statutory crimes.[3550] As such, it is not necessary to establish that without the plan by the accused, the crime would not have been committed.[3551] However, it must be noted that the fact that the crime was actually committed is a prerequisite for liability for planning of a crime.[3552]

3. Instigating

901. The requisite *actus reus* and *mens rea* for instigation of a crime are that the accused, either through an act or omission,[3553] prompted another person to commit an offence[3554] with the intent that a crime be committed as a result of such prompting,[3555] or the accused possessed an awareness of the substantial likelihood that a crime would be committed through the achievement of such prompting.[3556] This is applicable whether the *mens rea* of a crime is general or specific.[3557]

902. The mode of instigating can be express and/or implicit prompting by the accused.[3558] It is not a requirement for the accused to have any sort of authority[3559] or effective control over a perpetrator.[3560]

903. It is required that the crime which the accused is charged with instigating was actually committed.[3561] Even though the accused's prompting must have been a factor "substantially contributing to the conduct of another person committing the crime", it is not necessary for the

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3546 *Milutinović et al.* Trial Judgement, Vol. I, para. 81.
3547 *Kordić and Čerkez* Appeal Judgement, para. 26; *Milutinović et al.* Trial Judgement, Vol. I, para. 81.
3548 *See Kordić and Čerkez* Appeal Judgement, para. 112; *Blaškić* Appeal Judgement, para. 166.
3549 *Kordić and Čerkez* Appeal Judgement, para. 26.
3550 *Ibid.*
3551 *Ibid.*
3552 *Aleksovski* Appeal Judgement, para. 165. *See also Orić* Trial Judgement, para. 269, fn. 732; *Brđanin* Trial Judgement, para. 271; *Simić et al.* Trial Judgement, para. 161.
3553 *Brđanin* Trial Judgement, para. 269; *Galić* Trial Judgement, para. 168.
3554 *Brđanin* Appeal Judgement, para. 312; *Kordić and Čerkez* Appeal Judgement, para. 27.
3555 *Ibid.*
3556 *Kordić and Čerkez* Appeal Judgement, para. 30.
3557 *Kordić and Čerkez* Appeal Judgement, paras. 32, 112. *See also Blaškić* Appeal Judgement, para. 166.
3558 *Milutinović et al.* Trial Judgement, Vol. I, para. 83; *Brđanin* Trial Judgement, para. 269; *Blaškić* Trial Judgement, paras. 280–281.
3559 *Orić* Trial Judgement, para. 272; *Brđanin* Trial Judgement, para. 359; *Semanza* Appeal Judgement, para. 257.
3560 *Semanza* Appeal Judgement, para. 257.
3561 *Orić* Trial Judgement, para. 269; *Brđanin* Trial Judgement, para. 267; *Galić* Trial Judgement, para. 168. *See also Mpambara* Trial Judgement, para. 18.

Prosecution to prove that the crime would not have been committed absent the accused's prompting.[3562]

4. Ordering

904. The requisite *actus reus* and *mens rea* for ordering of a crime are that the accused intentionally instructed another person to engage in an act or omission,[3563] with the intent that a crime be committed in the execution of those instructions, or with the awareness of the substantial likelihood that a crime would be committed in the execution of those instructions.[3564]

905. It is not necessary for the Prosecution to prove the existence of a formal superior-subordinate relationship between the accused and the perpetrator of the crime.[3565] However, the Prosecution must put forth "proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused's order".[3566] The authority of the accused over the perpetrator can be either *de jure* or *de facto*;[3567] and can be of an informal and temporary nature.[3568] Further, the order given by the accused to the perpetrator may be indirect[3569] and there is no requirement for the order to be in any particular form.[3570] The order must have had "a direct and substantial effect on the commission of the illegal act".[3571]

906. It is required that the crime which the accused is charged with ordering was actually committed.[3572] However, it is not necessary for the Prosecution to prove that the crime would not been committed but for the accused's order.[3573]

3562 *Kordić and Čerkez* Appeal Judgement, para. 27.
3563 *Galić* Appeal Judgement, para. 176; *Kordić and Čerkez* Appeal Judgement, para. 28; *Boškoski and Tarčulovski,* Appeal Judgement: para. 160. *See also Semanza* Appeal Judgement, para. 361.
3564 *Galić* Appeal Judgement, para. 152; *Kordić and Čerkez* Appeal Judgement, paras. 29–30; *Blaškić* Appeal Judgement, paras. 41–42; *Martić* Appeal Judgement, paras. 221–222.
3565 *Kordić and Čerkez* Appeal Judgement, para. 28; *Semanza* Appeal Judgement, para. 361.
3566 *Semanza* Appeal Judgement, para. 361. *See also Galić* Appeal Judgement, para. 176; *Kamuhanda* Appeal Judgement, para. 75; *Boškoski and Tarčulovski* Appeal Judgement, para. 164.
3567 *Boškoski and Tarčulovski* Trial Judgement, para. 400; *Brđanin* Trial Judgement, para. 270; *Mrkšić et al.* Trial Judgement, para. 550.
3568 *Semanza* Appeal Judgement, para. 363.
3569 *Kamuhanda* Appeal Judgement, para. 76: *Popović et al.* Trial Judgement, para. 1012; *Kordić and Čerkez* Trial Judgement, para. 388; *Blaškić* Trial Judgement, para. 281.
3570 *Kamuhanda* Appeal Judgement, para. 76; *Đorđević* Trial Judgement, para. 1871.
3571 *Kamuhanda* Appeal Judgement, para. 75. *See also Strugar* Trial Judgement, para. 332; *Galić* Trial Judgement, para. 169.
3572 *Nahimana et al.* Appeal Judgement, para. 481; *Galić* Appeal Judgement, para. 176; *Martić* Trial Judgement, para. 441; *Brđanin* Trial Judgement, para. 267.
3573 *Kamuhanda* Appeal Judgement, para. 75. *See also Strugar* Trial Judgement, para. 332; *Galić* Trial Judgement, para. 169.

5. Aiding and Abetting

907. The aiding and abetting of a crime is a form of accomplice liability.[3574] The requisite *actus reus* for aiding and abetting is that the accused carried out acts or omissions which assist, encourage, or lend moral support to the perpetration of a certain specific crime, and which have a substantial effect on the perpetration of the crime.[3575]

908. Whether a given act constitutes substantial assistance to a crime requires a fact-based inquiry.[3576] However, it is neither necessary to prove a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime, nor to prove that such conduct was a condition precedent to the commission of the crime.[3577] The assistance provided by the accused may occur before, during, or after the principal crime has been committed.[3578] No proof is required of a plan or agreement between the accused and the perpetrator or intermediary perpetrator.[3579]

909. The Appeals Chamber has distinguished aiding and abetting by omission from aiding and abetting by tacit approval and encouragement.[3580] Aiding and abetting by omission requires proof that the accused had the duty to act[3581] as well as an ability to act, such that means were available to him to fulfil this duty.[3582] Aiding and abetting by tacit approval and encouragement, however, is based not on a duty to act but on the encouragement and support that might be afforded to the perpetrators of the crime from such an omission.[3583] Usually, mere presence at the scene of a crime will not constitute aiding and abetting,[3584] but the physical presence at the crime scene of an accused who is, for example, a supervisor or in a position of authority, can serve as an encouragement to the perpetrator in the form of tacit approval and may bestow legitimacy on the crime even where the accused had no duty to act.[3585]

3574 *Tadić* Appeal Judgement, para. 229. *See also Đorđević* Trial Judgement, para. 1873.
3575 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Orić* Appeal Judgement, para. 43; *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, paras. 85–86; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 45; *Tadić* Appeal Judgement, para. 229. *See also Ntagerura et al.* Appeal Judgement, para. 370.
3576 *Mrkšić and Šljivančanin* Appeal Judgement, paras. 146, 200; *Blagojević and Jokić* Appeal Judgement, para. 134.
3577 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blaškić* Appeal Judgement, para. 48.
3578 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blaškić* Appeal Judgement, para. 48; *Krnojelac* Trial Judgement, para. 88; *Brđanin* Trial Judgement, para. 271; *Limaj et al.* Trial Judgement, para. 517.
3579 *Tadić* Appeal Judgement, para. 229; *Brđanin* Appeal Judgement, para. 263; *Simić et al.* Trial Judgement, para. 162.
3580 *Brđanin* Appeal Judgement, paras. 273–274.
3581 *Blaškić* Appeal Judgement, para. 663; *Ntagerura et al.* Appeal Judgement, para. 334.
3582 *Mrkšić and Šljivančanin* Appeal Judgement, para. 49.
3583 *Kayishema and Ruzindana* Appeal Judgement, paras. 201–202.
3584 *Brđanin* Appeal Judgement, paras. 273, 277; *Boškoski and Tarčulovski* Trial Judgement, para. 402; *Limaj et al.* Trial Judgement, para. 517.
3585 *Brđanin* Appeal Judgement, paras. 273, 277. *See also Đorđević* Trial Judgement, para. 1875.

910. It is required that the crime which the accused is charged with aiding and abetting was actually committed.[3586] The aider and abetter does not need to know who is committing the crime,[3587] nor is it necessary for the person or persons committing the crime to have been tried or identified.[3588] Further, the Prosecution generally need not provide evidence that a plan or an agreement existed between the aider and abettor and the person or persons committing the crimes.[3589]

911. The requisite *mens rea* for aiding and abetting is the accused's knowledge that the acts or omission assist the commission of the specific crime of the principal perpetrator.[3590] This knowledge can be inferred from all the relevant circumstances and need not be explicitly expressed.[3591] Furthermore, the accused must be aware of the essential elements of the crime ultimately committed by the principal perpetrator, including his state of mind.[3592] It suffices that the accused was aware that one of a number of crimes would probably be committed and one of those crimes was in fact committed.[3593] It is not necessary for the accused to share the *mens rea* of the principal perpetrator.[3594] With regard to the specific intent crimes, such as genocide and persecution, it must be shown that the accused knew of the principal perpetrator's genocidal or discriminatory intent.[3595]

B. Role of the Accused

1. Introduction

912. In this section, the Chamber will detail the professional positions of the Accused and the functions he performed in relation to these roles as explained by the evidence. Thereafter, the Chamber will chronologically summarise the relevant actions and conduct of the Accused during the period of the Indictment.

3586 *Aleksovski* Appeal Judgement, para. 165.
3587 *Krstić* Appeal Judgement, para. 143. *See also Brđanin* Appeal Judgement, para. 355.
3588 *Krstić* Appeal Judgement, para. 143. *See also Stakić* Trial Judgement, para. 533.
3589 *Krnojelac* Appeal Judgement, para. 33; *Tadić* Appeal Judgement, para. 229.
3590 *Mrkšić and Šljivančanin* Appeal Judgement, paras. 49, 159; *Orić* Appeal Judgement, para. 43; *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 86; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 45; *Tadić* Appeal Judgement, para. 229; *Ntagerura et al.* Appeal Judgement, para. 370.
3591 *Đorđević* Trial Judgement, para. 1876; *Milutinović et al.* Trial Judgement, Vol. I, para. 94.
3592 *Mrkšić and Šljivančanin* Appeal Judgement, paras. 49, 159; *Orić* Appeal Judgement, para. 43; *Alekovski* Appeal Judgement, para. 162; *Vasiljević* Appeal Judgement, para. 102; *Tadić* Appeal Judgement, para. 229; *Simić* Appeal Judgement, para. 86.
3593 *Mrkšić and Šljivančanin* Appeal Judgement, paras. 49, 159; *Simić* Appeal Judgement, para. 86, citing *Blaškić* Appeal Judgement, para. 50. *See also Nahimana et al.* Appeal Judgement, para. 482.
3594 *Alekovski* Appeal Judgement, para. 162; *Vasiljević* Appeal Judgement, para. 102; *Tadić* Appeal Judgement, para. 229; *Simić Appeal Judgement, para. 86. See also Đorđević* Trial Judgement, para. 1876.
3595 *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 86; *Krstić* Appeal Judgement,

2. Position and Functions of the Accused

(a) Professional Background of the Accused

913. The Accused was born on 27 November 1948 in Glamoč Municipality, BiH.[3596] In 1971, he graduated from Military Academy in Serbia and began working as an Infantry Second Lieutenant in the JNA stationed in Macedonia.[3597] By August 1974, he was made "Acting Chief of Security Organ" and a little over a year later, he was designated the "Chief of Security Organ".[3598] He climbed the ranks while working in the JNA Counter-Intelligence Group and in June 1992, having attained the rank of Colonel in the year prior, was appointed as Chief of Administration for Intelligence-Security of the newly formed VRS.[3599] On 16 December 1992, his title changed to Assistant Commander of the Sector for Intelligence and Security of the Main Staff of the VRS.[3600] In June 1994, the Accused was promoted to the rank of General Major.[3601] He was retired from active duty on 16 October 1995, but remained a reserve officer.[3602] He was relieved of duty on 31 January 1997[3603] and his professional military service was terminated on 31 January 2000.[3604]

(b) Role as the Chief of the Sector for Intelligence and Security Affairs and Assistant Commander

914. As Chief of the Sector for Intelligence and Security Affairs,[3605] the Accused was responsible for control and management of the entire sector.[3606] Through his position, the Accused controlled the appointment of security and intelligence officers;[3607] as such, the appointment of Beara, Salapura, Radoslav Janković, Keserović, Popović, Momir Nikolić, Drago Nikolić, and Trbić, fell "directly and squarely" within his competence.[3608] The Accused was the immediate superior of the Chief of Security, Beara,[3609] and the Chief of Intelligence, Salapura.[3610] As an Assistant

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paras. 140, 143; *Vasiljević* Appeal Judgement, para. 142; *Krnojelac* Appeal Judgement, para. 52. *See also Popović et al.* Trial Judgement, para. 1017.

3596 Ex. P02234, p. 1. *See also* Ex. P02437, p. 2.

3597 Ex. P02234, pp. 1–2.

3598 Ex. P02234, p. 2.

3599 Ex. P02234, pp. 3–4; Ex. P02476. *See also* Manojlo Milovanović, T. 14184 (17 May 2011); Ex. D00261, p. 9.

3600 Ex. P02234, p. 4.

3601 Ex. P02234, p. 4. *See also* Ex. P02437, p. 2.

3602 Ex. D00298.

3603 Ex. P02461. *See also* Ex. P02460.

3604 Ex. P02234, p. 4.

3605 *See supra* paras. 83, 87.

3606 *See supra* paras. 103–104. *See also supra* paras. 105–122.

3607 Richard Butler, T. 16341 (8 July 2011).

3608 Richard Butler, T. 16341–16342 (8 July 2011). *See also* Richard Butler, T. 16337–16340 (8 July 2011); Ex. P01112, p. 1; Ex. P02484, p. 2. For the exact positions and ranks held by these men, see *supra* Chapter III.

3609 *See supra* para. 105.

3610 *See supra* para. 115.

Commander, the Accused was directly subordinated to the Commander of the VRS Main Staff, Mladić.[3611]

915. Chief of Staff Milovanović described the Accused as Mladić's "eyes and ears".[3612] The Accused's function was to prevent leaks of highly classified information from the enemy or "anyone else who wasn't supposed to [k]now",[3613] and to "cover up the intentions of the VRS".[3614] To this end, the Accused received daily written reports from each administration[3615] and detailed oral reports from his subordinates.[3616] Further, the Accused was kept apprised of any assignments that went directly from Mladić to the Accused's subordinate intelligence and security officers.[3617] Mihajlo Mitrović testified that available information was always presented to the Accused;[3618] there were no secrets kept from him.[3619] According to Milovanović, Tolimir "always knew more" than his immediate subordinates, Salapura and Beara.[3620]

916. The Accused was responsible for implementing and monitoring all security- and intelligence-related orders from Mladić[3621] and Milovanović.[3622] As put by Petar Škrbić, assistant commanders to Mladić were "experts for the implementation of the commander's order[s] and decision[s] in the best possible way".[3623] For example, the Accused would receive assignments or tasks for the MP from Mladić and, as the MPs were professionally controlled by the security

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3611 Ex. D00261, p. 9. Mladić exercised ultimate command. Petar Škrbić, T. 18535, 18545, 18548, 18555 (30 January 2012); Ljubomir Obradović, T. 12150–12151 (31 March 2011).

3612 Manojlo Milovanović, T. 14247–14248 (17 May 2011). *See also* Manojlo Milovanović, T. 14250 (17 May 2011).

3613 Manojlo Milovanović, T. 14249 (17 May 2011).

3614 Manojlo Milovanović, T. 14246–14247 (17 May 2011). *See also* Richard Butler, T. 16330–16331 (8 July 2011).

3615 Milenko Todorović, T. 12960 (18 April 2011); Mikajlo Mitrović, T. 14969–14970 (1 June 2011), T. 15065 (2 June 2011); Ex. D00276, pp. 82, 87; Dragomir Keserović, T. 13884–13885, 13904 (10 May 2011); Petar Salapura, T. 13483 (2 May 2011). *See, e.g.,* Ex. P02212; Dragomir Pećanac, T. 18048–18049 (private session) (12 January 2012). In September of 1995, as a result of the disruption in the system caused by NATO air-strikes, an alternate communication system was put in place. Mikajlo Mitrović, T. 14955–14957, 14963–14964 (1 June 2011), T. 15020–15021 (2 June 2011); Ex. D00259, pp. 1–2. *See also supra* paras. 108, 116–117, 121.

3616 Mikajlo Mitrović, T. 15065 (2 June 2011). Subordinate officers could report directly to the Accused so long as they later included their direct supervisors *See supra* para. 104. For example, Popović would convey technical information to the Accused to assist in facilitating the overall operation. Richard Butler, T. 16571 (13 July 2011). *See, e.g.,* Ex. P02515, p. 1; Richard Butler, T. 16568–16569 (13 July 2011). Mitrović testified that the Accused would have trusted the information from Beara and Salapura implicitly. Mikajlo Mitrović, T. 15067–15068 (2 June 2011).

3617 Richard Butler, T. 17371–17372 (29 August 2011). *See also* Richard Butler, T. 17364–17373 (29 August 2011) (discussing Ex. P00126). On the rare occasions when Milovanović and Beara had direct contact with respect to front-line issues, this always occurred with the approval or knowledge of the Accused. Manojlo Milovanović, T. 14191–14192 (17 May 2011).

3618 Mikajlo Mitrović, T. 14990–14991 (1 June 2011), T. 15073 (2 June 2011).

3619 Mikajlo Mitrović, Ex. P02259, PT. 25142–25143 (3 September 2008) (adding that he "wouldn't like to be in the skin of the person who tried to keep secrets from [the Accused]"); Ex. D00276, p. 95.

3620 Manojlo Milovanović, T. 14248 (17 May 2011).

3621 Manojlo Milovanović, T. 14218–14219 (17 May 2011); Richard Butler, T. 16583 (13 July 2011), T. 17315 (25 August 2011).

3622 Manojlo Milovanović, T. 14191 (17 May 2011).

3623 Petar Srkbić, T. 18556 (30 January 2012).

organs,[3624] the Accused would be duty-bound to see to it that they would be carried out.[3625] The Accused could issue direct orders down the chain of command with regard to training and equipping units of the MP; in all other instances, the Accused could issue orders for the MP only with Mladić's approval.[3626] In 1995, the Accused was involved with the MPs in dealing with POWs,[3627] and was kept informed on the work and engagement of the MP units of the various Corps.[3628]

917. As the direct superior of Salapura,[3629] the Accused was kept abreast of the actions of the 10th Sabotage Detachment.[3630] As an intermediary between Salapura and Mladić, the Accused both made proposals to Mladić regarding the 10th Sabotage Detachment[3631] and saw to it that the security- and intelligence-related aspects of Mladić's orders regarding this unit were implemented.[3632] Mladić had also transferred certain authorities of the 410th Intelligence Centre to the Accused.[3633]

918. As an assistant commander in the VRS Main Staff, the Accused took part in daily collegium meetings, gave briefings on the security situation in the RS, provided intelligence information, and made proposals for counter-actions.[3634] Further, the Accused would chair the meetings if neither

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3624 *See supra* para. 111.

3625 Dragomir Keserović, T. 13911–13915 (10 May 2011), T. 13999 (11 May 2011). *See, e.g.,* Ex. P02216; Dragomir Keserović, T. 13908–13914 (10 May 2011). The MP was duty-bound to comply with and implement all orders and instructions. Milenko Todorović, T. 12974–12975 (18 April 2011). *See, e.g.,* Ex. P01970.

3626 Mikajlo Mitrović, T. 14977–14979 (1 June 2011). *See supra* para. 108.

3627 *See, e.g.,* Ex. P02203; Ex. D00064. *See also* Richard Butler, T. 16336–16338, 16351–16355 (8 July 2011).

3628 Milenko Todorović, T. 12960–12963 (18 April 2011). The Accused frequently accompanied Koljević to meetings to facilitate prisoner-exchange agreements. Ljubomir Obradović, T. 11930–11931 (29 March 2011).

3629 *See supra* para. 115.

3630 The Intelligence Administration, headed by Salapura, directly controlled the 10th Sabotage Detachment. Dragomir Pećanac, T. 18134 (16 January 2012); Ljubomir Obradović, T. 11960–11962 (29 March 2011). *See supra* para. 121.

3631 Petar Salapura, T. 13486–13487 (2 May 2011). The 10th Sabotage Detachment was a unit directly subordinated to Mladić. Petar Salapura, T. 13486 (2 May 2011). However, Škrbić did not rule out the possibility that General Mladić transferred certain authorities regarding this unit to the sector of the Accused. Petar Škrbić, T. 18789 (2 February 2012).

3632 Petar Salapura, T. 13489–13490 (2 May 2011). For example, when Mladić ordered the Intelligence and Security Sector to provide "good quality personnel" for the 10th Sabotage Detachment, the Accused issued a follow-up warning to his subordinates to realise the implementation of this order. Ex. P02141; Petar Škrbić, T. 18791–18792 (2 February 2012). *See also* Ex. P02870. Subordinates would be required to act on either Mladić's original order (Ex. P02870)—cited as a good example of "komandovanje"—or the Accused's warning (Ex. P02141)—cited as a good example of "rukovođenje". Petar Škrbić, T. 18791–18793 (2 February 2012). For further discussion of "komandovanje" and "rukovođenje", see *supra* n. 249.

3633 Petar Škrbić, T. 18566 (30 January 2012), T. 18789 (2 February 2012). *See also supra* paras. 117–119.

3634 Manojlo Milovanović, T. 14200–14205 (17 May 2011). Milovanović testified that he was not a "bigger expert in security or intelligence than [the Accused]" so that he would modify his own suggestions to Mladić according to what [the Accused] would say "for example, in providing support in combat operations". Manojlo Milovanović, T. 14216 (17 May 2011).

Mladić nor Milovanović could be present and when the focus was primarily security-related.[3635] Additionally, the Accused took part in the collegium's decision-making process.[3636]

919. As a general of the VRS, the Accused was capable of exercising general military command and could be dispatched to a command or monitoring position at a battle-front.[3637] In addition, the Accused could also take over command authority in Mladić's absence[3638] and was authorised to issue orders in Mladić's name.[3639] An intercepted conversation of 5 September 1995 exemplifies the Accused's ability to step in for Mladić when necessary—when Karadžić called the VRS Main Staff and asked to speak to Mladić, the Accused was put on the line instead as the highest-ranking officer present.[3640]

920. The Accused was also tasked with negotiating with the ABiH, the UN, and the international community and entered into agreements on behalf of the VRS.[3641] In this regard, throughout the war, the Accused played a central role in the convoy approval process[3642] and was instrumental in matters related to POW exchanges.[3643]

(c) Mladić's "Inner Core"

921. Working together from the start of the war,[3644] the Accused had a close relationship with Mladić,[3645] who referred to him by his nickname, "Tošo".[3646] Petar Škrbić described the Accused as the person Mladić trusted most.[3647] Mladić often consulted the Accused for his view before taking a decision.[3648] The Accused often accompanied Mladić at negotiations or meetings,[3649] where Mladić

3635 Manojlo Milovanović, T. 14205 (17 May 2011).
3636 Manojlo Milovanović, T. 14208 (17 May 2011). *See supra* paras. 92–94.
3637 Manojlo Milovanović, T. 14230–14231 (17 May 2011).
3638 Mikajlo Mitrović, T. 15079–15080 (2 June 2011); Ljubomir Obradović, T. 12017, 12020 (30 March 2011); Rupert Smith, Ex. P02086, PT. 17582–17584 (6 November 2007).
3639 *See, e.g.*, Ex. P01112; Mikajlo Mitrović, T. 15076, 15079–15080 (2 June 2011).
3640 Ex. P02156; Ljubomir Obradović, T. 12082–12084 (30 March 2011).
3641 Dragomir Pećanac, T. 18040 (12 January 2012). *See supra* para. 183, n. 698. Additionally, the Accused was a part of the delegation of the RS at the Dayton Accords. Manojlo Milovanović, T. 14263 (18 May 2011); Slavko Kralj, T. 18408 (25 January 2012).
3642 Slavko Kralj, T. 18421–18422 (25 January 2012). *See supra* para. 194.
3643 *See, e.g., supra* paras. 554–555.
3644 As early as 1992, the Accused was among the group who set up the VRS and jointly attended the 12 May 1992 Assembly Session. Manojlo Milovanović, T. 14183–14186 (17 May 2011), T. 14274–14275 (18 May 2011). At that time, an "oath" was taken that if one of the 12 members of the Main Staff was to be replaced during the war for political reasons, the entire Main Staff would leave. Manojlo Milovanović, T. 14186 (17 May 2011).
3645 Rupert Smith, T. 11586 (21 March 2011) (testifying further that the relationship between the two was not a "straightforward hierarchical structure with one doing what he was told"); Rupert Smith, Ex. D00193, p. 6.
3646 Manojlo Milovanović, T. 14245 (17 May 2011); Ljubomir Obradović, T. 11992 (29 March 2011). *See also* Richard Butler, T. 16833 (19 July 2011); Ex. P02216, p. 3. *See also supra* para. 194.
3647 Petar Škrbić, T. 18722 (1 February 2012). *See also* Manojlo Milovanović, T. 14246 (17 May 2011); Dragomir Keserović, T. 13917 (10 May 2011); Rupert Smith, T. 11586 (21 March 2011).
3648 Manojlo Milovanović, T. 14245–14246 (17 May 2011). Milovanović recalled at least one occasion where the Accused, along with Gvero, openly criticised Mladić about a letter he proposed to send. *Ibid.*
3649 Manojlo Milovanović, T. 14248 (17 May 2011); Rupert Smith, T. 11586 (21 March 2011).

described him as his "right hand" man.[3650] While Mitrović stated that "[a] true commander who has a good security organ considers that security organ [to be] his right hand, his second in command",[3651] Smith described Mladić and the Accused as "closer to being equals".[3652] At a New Year's celebration on 13 January 1996, Mladić is recorded as referring to the Accused as part of "the inner core"[3653] that took the most important decisions during the war.[3654]

3. Acts and Conduct of the Accused

(a) March to End June 1995

922. From the end of March 1995 onward, the Accused participated in a number of long-term efforts which set the stage for the eventual takeovers of the Srebrenica and Žepa enclaves in July 1995. For example, as Assistant Commander of the Sector for Intelligence and Security Affairs, the Accused was involved in the process of drafting Directive 7 with respect to the intelligence information contained therein.[3655] Moreover, as the Chamber has already found, the Accused was closely involved in the process of approving or rejecting UNPROFOR resupply convoys,[3656] both prior to and during the increase in restrictions imposed after March 1995.[3657]

923. On 27 May 1995, following the NATO air strikes on VRS targets during the preceding days and the subsequent capture of UN hostages,[3658] the Accused authorised a document that was sent to the intelligence and security departments of numerous subordinate corps[3659] proposing that they recommend to their commanders that the "captured members of UN forces be placed in an area of possible NATO air strike".[3660] Karadžić's order that the captured UNPROFOR soldiers be released

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3650 Rupert Smith, T. 11584–11585 (21 March 2011); Rupert Smith, Ex. D00193, p. 6. *See also* David Wood, T. 11091–11092 (10 March 2011).

3651 Mikajlo Mitrović, Ex. P02259, PT. 25127–25128 (3 September 2008).

3652 Rupert Smith, T. 11586 (21 March 2011).

3653 The "inner core" also included Milovanović, Đukić, and Gvero. Manojlo Milovanović, T. 14261 (18 May 2011)

3654 Ex. P02228, 00:18:39–00:19:32, p. 10; Manojlo Milovanović, T. 14261 (18 May 2011); Petar Škrbić, T. 18724–18725 (1 February 2012). *See also* Ex. P01029, 01:49:30–01:49:40, pp. 6–7. At the same event, Mladić also stated: "I am saddened that the most important among them, General Tolimir, and his wife, are not with us tonight". Ex. P02228, 00:17:50–00:18:16, p. 10; Petar Škrbić, T. 18725 (1 February 2012). *See also* Ex. P01029, p. 1.

3655 *See supra* para. 100, n. 677.

3656 *See supra* para. 194.

3657 *See supra* paras. 193–196, n. 697.

3658 *See supra* para. 208.

3659 Specifically, the document was addressed to the Intelligence and Security Departments of the 1st and 2nd Krajina Corps, the Eastern Bosnia Corps, the Sarajevo-Romanija Corps, the Herzegovina Corps, the Air Force, and the Anti-Aircraft Defence. Ex. P02140.

3660 Ex. P02140; Richard Butler, T. 16531–16532 (12 July 2011) (explaining that Ex. P02140 was signed by Lieutenant Colonel Jovica Karanović on behalf of "the Chief", which referred to the Accused). Later on the same day this proposal was implemented through an order sent by Milovanović. Ex. P02510, p. 2; Richard Butler, T. 16532–16534.

bears handwritten instructions to personally deliver it to the Accused.[3661] It is thus evident that the Accused was a knowing participant in the actions against UNPROFOR personnel.

924. The Chamber has concluded that members of the 10th Sabotage Detachment, which was professionally subordinated to the Intelligence Administration,[3662] which in turn was overseen by the Accused,[3663] entered the Srebrenica enclave during the night of 23–24 June 1995 in order to carry out sabotage activities in the Vidikovac area.[3664] On 25 June 1995, the Accused circulated a daily intelligence report stating that the 28th Division, "wanting to cause condemnation by the international community", was "circulating disinformation" that the VRS had carried out a sabotage attack on civilian features.[3665]

(b) July 1995

(i) 8 July 1995

925. In the wake of DutchBat's retreat from OP Foxtrot on 8 July 1995,[3666] at approximately 3:30 p.m.,[3667] the Accused received a call from Brigadier General Cornelis Nicolai, UNPROFOR's Chief of Staff, who protested against the attack on OP Foxtrot and the Bosnian Serb Forces' incursion into the enclave, insisting that the VRS withdraw its troops behind the agreed cease-fire lines.[3668] The Accused responded that he was not informed about the problem, stated that the ABiH had been using six UNPROFOR APCs in the Srebrenica area, and requested that Nicolai order UNPROFOR to confiscate the ABiH's heavy weapons, including these APCs.[3669]

926. Following this conversation, the Accused contacted Živanović,[3670] relaying the message that the UNPROFOR Command had filed a protest note with the VRS Main Staff regarding actions against an OP, and informing Živanović of his reply to Nicolai.[3671] Although the Accused had

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3661 Ex. P02783.
3662 *See supra* para. 121, n. 3630.
3663 *See supra* paras. 121, 917.
3664 *See supra* para. 211.
3665 Ex. P02512, p. 4; Richard Butler, T. 16544–16546 (12 July 2011).
3666 *See supra* para. 222.
3667 Ex. P00306 (confidential). *See also* Ex. P00786.
3668 *See supra* para. 222.
3669 Ex. P00306 (confidential); Ex. P00786. *See supra* para. 222. *See also* Cornelis Nicolai, T. 3881–3882 (12 July 2010). As he was confident that no DutchBat APCs were missing and had never seen or heard of a report by UN personnel regarding missing APCs used by the ABiH, Nicolai did not see a reason to attempt to verify the Accused's claim at the time; it would have been "highly remarkable" for such missing APCs not to have been reported by UNPROFOR, DutchBat, or the UNMOs. Cornelis Nicolai, T. 3947, 3951–3953, 3955 (13 July 2010). Franken also testified that he was not aware of any protest note being sent by the VRS to UNPROFOR alleging that the ABiH was using UNPROFOR vehicles. Robert Franken, T. 3455–3456 (1 July 2010).
3670 Ex. D00069; Richard Butler, T. 16567 (13 July 2011) (testifying that Živanović was clearly conveying a message which had been previously relayed to him by the Accused). Živanović ends the message with the words "Good luck in war and best regards from General Tolimir". Ex. D00069.
3671 Ex. D00069; Richard Butler, T. 16567 (13 July 2011).

promised Nicolai that UNPROFOR positions would not be attacked, and despite an order by the VRS Main Staff not to attack UNPROFOR,[3672] two UNPROFOR positions located approximately 500 metres west of OP Foxtrot were surrounded by Bosnian Serb Forces.[3673] At 7:45 p.m. that evening, as no VRS generals were available, Nicolai spoke to "an officer authorised to deal with UNPROFOR principals"[3674] and left a message with him that, despite the promises of the Accused that UNPROFOR positions would not be attacked, VRS troops had surrounded two UNPROFOR positions.[3675]

(ii) 9 July 1995

927. On 9 July, the Accused and Nicolai had a series of telephone conversations concerning the continuously deteriorating circumstances as a result of VRS infiltration into the enclave.[3676] Nicolai warned the Accused several times on this day that unless the VRS advance into the enclave was halted and the VRS forces withdrawn, UNPROFOR would be forced to take defensive actions.[3677] In response the Accused never acknowledged the VRS advance.[3678] The Accused insisted that the conflict was one between the VRS and the ABiH—which he said was using heavy weapons that had never been handed over and APCs belonging to UNPROFOR—and not between the VRS and

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3672 Ex. D00069; Richard Butler, T. 16567 (13 July 2011). The Accused also told Živanović that he had demanded that UNPROFOR warn the ABiH to withdraw to within the borders of the enclave, disarm the ABiH in accordance to the agreement, and not set up OPs outside the marked demilitarized zones. Ex. D00069. Živanović then relayed this message in a telegram to Krstić at the Drina Corps IKM, conveying the Main Staff's order to the Drina Corps not to attack UNPROFOR, but rather to "prevent any surprises" and to stop the ABiH from joining the Srebrenica and Žepa enclaves. Ex. D00069.

3673 Ex. P00679 (report of telephone conversation conducted with VRS headquarters); Cornelis Nicolai, Ex. P00674, PT. 18466 (29 November 2007); Ex. P00309 (confidential), pp. 3–4 (intercept dated 8 July 1995 at 7:50 p.m., recording the VRS side of the conversation recorded in Ex. P00679).

3674 Ex. P00679.

3675 Ex. P00679.

3676 *See supra* paras. 224–225.

3677 Cornelis Nicolai, T. 3905–3906 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18469 (29 November 2007); Ex. P00680; Ex. P00699; Ex. P00700, pp. 1–2; Ex. P00683, pp. 1–2. This warning was later confirmed in writing by Janvier and Akashi. Cornelis Nicolai, T. 3920–3921 (13 July 2010).

3678 Cornelis Nicolai, T. 3906, 3919 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18470 (29 November 2007); Ex. P00680; Ex. P00683, p. 1; Ex. P00313 (confidential), p. 2. In a telephone conversation at approximately 5:50 p.m. the Accused said that he would look into what Nicolai was saying about a VRS advance, though the Accused did not believe it. Ex. P00680. During another conversation at approximately 7:30 p.m., the Accused stated that he had passed Nicolai's inquiry on to one of his subordinate commanders, who had stated that there were "no special problems out there with the UN representatives [...] and that there [were] no problems with the general population either". Ex. P00313 (confidential), p. 2. *See also* Ex. P00683, p. 1; Ex. P00702. This information stood in stark contrast to the reports filtering up the UNPROFOR chain of command. Cornelis Nicolai, T. 3919–3920 (13 July 2010) (testifying that Karremans had told him in telephone conversations about VRS attacks near Srebrenica and against the OPs). UNPROFOR was also receiving interim reports from the OPs as they were being attacked. Cornelis Nicolai, T. 3920 (13 July 2010). In light of the information and means available to the VRS as well as the fact that the actions had started four days before and had been the subject of explicit complaints, Nicolai doubted that the Accused was actually unaware of the situation. Cornelis Nicolai, T. 3906, 3912–3913 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18473 (29 November 2007) ("I'm fully convinced that [the Accused] knew exactly what was going on, but he was unwilling to confirm that."). *See also* Ex. P00680; Ex. P00699; Ex. P00700, pp. 1–2.

UNPROFOR or the civilian population.[3679] During their final conversation that day at 7:30 p.m., Nicolai rejected this suggestion and informed the Accused that the continued VRS attack constituted a direct attack on the safe area which was now threatening the civilian population.[3680] Both held firm to their positions,[3681] and the Accused ultimately stated that he wished to avoid an escalation of the situation and promised to contact his subordinate commanders.[3682]

928. Following this final conversation, the Accused sent a telegram at 8:25 p.m. to the Drina Corps IKM, to Krstić personally, and to the Sector for Intelligence and Security Affairs,[3683] relaying Nicolai's message that UNPROFOR considered the VRS actions to constitute an attack on a safe area, which would compel UNPROFOR to defend it.[3684] The Accused reported that he had told Nicolai that he was checking the information, noted that he anticipated speaking with UNPROFOR again in 40 minutes, and requested to be updated with a battlefield situation report every hour so that he could communicate with UNPROFOR which would enable Krstić "to continue to work according to plan".[3685] He also wrote that they should pay particular attention to protecting members of UNPROFOR and the civilian population.[3686] The Accused signed off by congratulating Krstić on his results.[3687]

929. Shortly after 11:00 p.m., the Accused received a call from General Bernard Janvier, the highest ranking member of the UNPROFOR military command structure.[3688] Following this

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3679 Ex. P00683, pp. 1–2; Ex. P00313 (confidential), p. 2.

3680 Ex. P00683, p. 2. *See also* Cornelis Nicolai, Ex. P00674, PT. 18475 (29 November 2007); Cornelis Nicolai, T. 3922–3924, 3933 (13 July 2010) (testifying that he believed the Accused's accusation absurd, impertinent, and false since the ABiH did not have any heavy weapons at the time and the only APCs UNPROFOR had lost were in the possession of the VRS following the attacks on the OPs). Nicolai did not believe the Accused's assertion that the VRS was attacking the enclave in response to attacks from the ABiH, partly because there had not been an increase in ABiH activities when compared to other points in time. Cornelis Nicolai, Ex. P00674, PT. 18531 (30 November 2007). *See also* Cornelis Nicolai, T. 3933 (13 July 2010); Cornelis Nicolai, Ex. P00674, PT. 18466–18467, 18472–18473, 18475 (29 November 2007) (testifying that there was a consistent pattern whereby the VRS would forcefully assert that it was not attacking UNPROFOR troops and the Accused would promise to inquire with subordinates on the ground). Nicolai also opined that it was "impossible that General Tolimir was not deliberately providing me with misleading answers". Cornelis Nicolai, T. 3934 (13 July 2010).

3681 Nicolai also told the Accused that it was irrelevant whether the UNPROFOR and VRS were fighting and that the issue was that VRS troops had already penetrated more than four kilometres into the enclave. Cornelis Nicolai, Ex. P00674, PT. 18473 (29 November 2007).

3682 Ex. P00683, p. 2; Ex. P00313 (confidential), pp. 2–3 (recording the Accused's responses); Cornelis Nicolai, Ex. P00674, PT. 18475 (29 November 2007). Nicolai concluded by stating that he would record in his notes that the VRS had been warned, as the VRS was "directly attacking the Safe Area, which was far beyond their self defence". Ex. P00683, p. 2; Cornelis Nicolai, T. 3921 (13 July 2010).

3683 The Accused also copied himself for information. Ex. D00085.

3684 Ex. D00085.

3685 Ex. D00085. Despite this message, the VRS troops did not pull back; rather, they continued their attack. Cornelis Nicolai, Ex. P00674, PT. 18475–18476 (29 November 2007); Cornelis Nicolai, T. 4178–4179 (19 August 2010).

3686 Ex. D00085.

3687 Ex. D00085.

3688 Ex. P00293 (confidential). Prior to transmitting the warning to Pale, Janvier had tried in vain to contact Mladić to communicate the warning to him directly. Mladić was not present, however, so Janvier spoke with the Accused. *See supra* para. 227. For information on Janvier's position in UNPROFOR, see *supra* para. 167.

conversation,[3689] which concluded with the Accused telling Janvier that "we will do everything we can to calm down the situation and to find a reasonable solution",[3690] the Accused sent a telegram marked "VERY URGENT" to the Drina Corps IKM and to Gvero and Krstić personally,[3691] stating that the RS President had been informed of the successful combat operations around Srebrenica and had agreed with the continuation of operations for the takeover of Srebrenica.[3692] The Accused also relayed the President's order that "full protection be ensured to UNPROFOR members and the Muslim civilian population and that they be guaranteed safety in the event of their cross-over to the territory of Republika Srpska", and in this regard, Krstić was ordered to issue an order to subordinate units implementing the President's direction.[3693] Moreover, Krstić was to

> order subordinate units to refrain from destroying civilian targets unless forced to do so because of strong enemy resistance. Ban the torching of residential buildings and treat the civilian population and war prisoners in accordance with the Geneva Conventions of 12 August 1949.[3694]

(iii) 10–12 July 1995

930. The Accused and Janvier spoke again on the telephone on three separate occasions during the evening of 10 July 1995, at approximately 8:10 p.m.,[3695] 9:05 p.m.,[3696] and 10:30 p.m.,[3697] respectively.[3698] In the first conversation, the Accused denied having any information regarding Janvier's claims that the VRS was attacking UNPROFOR and stated repeatedly that he would check with the personnel on the ground, requesting additional time to do this.[3699] He promised to contact the VRS commander at the location concerned and to issue an order to stop the attack.[3700] About an hour later in another telephone conversation the Accused told Janvier that he had issued

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3689 The Accused told Janvier that the VRS had very good relations with all the members of UNPROFOR and the Bosnian Muslim civilian population. Ex. P00293 (confidential), pp. 1–2. Nicolai stated that shelling the UNPROFOR soldiers and civilian population was "a very curious expression of maintaining good terms and good relations" and termed the Accused's averment as "too ridiculous for words". Cornelis Nicolai, T. 3928–3929 (13 July 2010). The Accused repeated his accusations that the ABiH had carried out attacks in an attempt to link Srebrenica with Žepa and that the ABiH were using UNPROFOR APCs. Ex. P00293 (confidential), p. 2. The Accused also told Janvier that UN soldiers who had crossed over to VRS-held territory were neither prisoners nor captured. Ex. P00293, p. 2 (confidential). Nicolai testified that the freedom of movement of these soldiers did not materialise in practice. Cornelis Nicolai, T. 3929–3930 (13 July 2010).

3690 Ex. P00293 p. 3 (confidential). No such actions took place on the ground, however. Cornelis Nicolai, T. 3939 (13 July 2010).

3691 The RS President was also copied for information. Ex. D00041.

3692 Ex. D00041.

3693 Ex. D00041. *See also* Richard Butler, T. 16581–16582 (13 July 2011) (characterising the Accused's words as "relaying" the order of the President rather than constituting an actual order on their own).

3694 Ex. D00041. Dražen Erdemović testified that similar orders were issued to the 10th Sabotage Detachment by Milorad Pelemiš. Dražen Erdemović, T. 1934 (17 May 2010). The Commander of the Romanija Brigade also testified that he received similar instructions from the Corps Command. Mirko Trivić, T. 8683–8684 (9 December 2010).

3695 Ex. P00315 (confidential); Ex. P00775.

3696 Ex. P00316 (confidential); Ex. P00776.

3697 Ex. P00294 (confidential); Ex. P00777.

3698 *See supra* para. 231.

3699 Ex. P00315 (confidential), pp. 2–3.

3700 Ex. P00315 (confidential), pp. 2–3; Ex. P00775.

an order for the attack to stop and said that fire had been opened on the VRS from an OP following orders issued over the ABiH radio network.[3701] Janvier repeated his demands for a cessation of the VRS attack and a withdrawal to the positions of 9 July in order to avoid NATO air-strikes.[3702] The Accused agreed to Janvier's request that he inform Mladić.[3703] In their final conversation the Accused told Janvier that he had checked the information that he had given him and there were no conflicts or problems between UNPROFOR and the VRS.[3704] He also said that he had relayed all messages to Mladić, who had "exerted his influence to calm down the situation".[3705]

931. In the early morning hours of 12 July 1995, the Accused went to Bijeljina, where he met with the personnel of the Security Organ of the Eastern Bosnia Corps.[3706] The Accused told Colonel Milenko Todorović, Chief of the Intelligence and Security Department in the Eastern Bosnia Corps,[3707] that he should prepare the Batković Collection Centre for the arrival of approximately 1,000–1,300 ABiH soldiers[3708] over the next few days.[3709] The Accused returned to Crna Rijeka on the same day.[3710]

932. At approximately 10:00 p.m. on the evening of 12 July,[3711] an intelligence report was sent under the Accused's name from the Drina Corps Command[3712] to, *inter alia*, the Main Staff Sector

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3701 Ex. P00316 (confidential), pp. 1–3; Ex. P00776.
3702 Ex. P00776.
3703 Ex. P00316 (confidential), p. 3.
3704 Ex. P00294 (confidential), p. 1.
3705 Ex. P00294 (confidential), pp. 2–3.
3706 Mile Mičić, T. 16001 (4 July 2011); Ex. D00296, pp. 5–6.
3707 Milenko Todorović, T. 12924 (18 April 2011).
3708 *See supra* para. 554.
3709 Milenko Todorović was unable to recall the specific date when he received this task, but testified that it was within two days of the fall of Srebrenica, which he recalled as being on 11 or 12 July. Milenko Todorović, T. 12932–12934 (18 April 2011); Ex. P02183, pp. 34–39. Ljubomir Mitrović testified that on 13 July 1995, he heard from Milenko Todorović, who had already spoken to the Accused, that the Accused had asked them to secure an additional hangar to receive Bosnian Muslim prisoners. Ljubomir Mitrović, T. 15174 (7 June 2011). Milenko Todorović was also unsure whether the task had been conveyed to him in person, over the telephone, or via telegram. Milenko Todorović, T. 12934–12937 (18 April 2011) (stating that he was "90 per cent" sure that he had received the information from the Accused via telegram, rather than a phone call); Ex. P02183, pp. 36–37 (indicating that Todorović was uncertain whether he had had direct contact with the Accused or whether he had received a telegram, but then stating that he could not exclude the possibility that he had met the Accused in person). In the Chamber's view, the manner in which this task was conveyed to Milenko Todorović is of lesser importance than the fact that Todorović indeed received it from the Accused. Although Todorović was initially equivocal about whether the assignment had come from the Accused, he later adopted the answer given during his interview with the Prosecution in 2010, at which point he had stated that he was "sure" that he received the information from the Accused. *See* Milenko Todorović, T. 12934–12935 (18 April 2011); Ex. P02183, p. 37. Taking the evidence of Ljubomir Mitrović and Milenko Todorović together with the evidence of Mile Mičić, who testified that he drove the Accused to a meeting of the Security Organ of the Eastern Bosnia Corps on 12 July 1995, the Chamber is satisfied that on 12 July 1995 the Accused requested the assistance of the Eastern Bosnia Corps in preparing the Batković Collection Centre for the anticipated arrival of 1,000–1,300 ABiH soldiers.
3710 Mile Mičić, T. 16001 (4 July 2011); Ex. D00296, pp. 5–6.
3711 Ex. P02203, p. 2 (stamp reflecting time received as 10:10 p.m.); Richard Butler, T. 16353–16354 (8 July 2011) (testifying that the stamp gives a "rough indication" of when the document might have been sent, taking into account "potential communication delays").
3712 Based on the fact that the report was type-signed in the Accused's name as well as the appearance of the number "17", Butler concluded that the Accused was present at the Drina Corps Command at the time the document was

for Intelligence and Security Affairs, the Drina Corps IKM at Pribičevac and Krstić personally, the Drina Corps IKM at Bratunac and Popović personally, and to the chiefs of security and intelligence organs of the subordinate brigades, as well as to the RS MUP.[3713] Based on information obtained from a Bosnian Muslim male who had been captured from the column, the Accused concluded that "civilians [...] have set off in an organised fashion to the UNPROFOR base in Potočari, while the armed formations of able-bodied men have left to break through illegally to reach Tuzla".[3714] Accordingly, the Accused instructed the subordinate security and intelligence organs to "propose measures to be taken by commands to prevent [the breakthrough], such as setting up ambushes [...] in order to arrest them".[3715]

933. Minutes later,[3716] in an intelligence report sent via telegram,[3717] to, *inter alia*, the subordinate intelligence and security organs of the Drina Corps, both its IKMs and to Krstić and Popović personally, the Accused noted the presence of elements of the 28th Division in the area of Cerska and the Zvornik-Šekovići road and instructed the intelligence and security organs of the Brigade Commands to propose to their commanders "to undertake all measures to prevent the withdrawal of enemy soldiers and to capture them".[3718] The Accused also specified in the telegram that "[a]lthough it is very important to arrest as many members of the shattered Muslim units as possible, or liquidate them if they resist, it is equally important to note down the names of all men fit for military service who are being evacuated from the UNPROFOR base in Potočari".[3719]

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put together. Richard Butler, T. 16353 (8 July 2011). Salapura first testified that when he tried to reach the Accused at Han Pijesak around 10:00 p.m. on 12 July, he was informed that the Accused was not present at the Main Staff Headquarters, but was in Rogatica or Žepa and was "calling in from time to time from Rogatica" but could not be reached by the Main Staff Command. Petar Salapura, T. 13562–13563 (3 May 2011). However, after reviewing Ex. P02203, Salapura accepted the possibility that the Accused was present in Vlasenica when the document was sent. Petar Salapura T. 13568 (3 May 2011). *See also* Dragomir Keserović, T. 14130–14131 (16 May 2011) (accepting the suggestion that the reason for the telegram being issued from the Drina Corps Command could have been that the Accused was present at Vlasenica at the time).

3713 Ex. P02203, p. 1.

3714 Ex. P02203, p. 2. The report also contained information on the route used by the column and advised the Bratunac, Zvornik, and Milići Brigades Commands, working with the MUP, to regulate overnight traffic on the Bratunac–Milići–Vlasenica and the Zvornik–Konjević Polje–Vlasenica roads. Ex. P02203, p. 2.

3715 Ex. P02203, p. 2.

3716 A stamp on Ex. D00064 reflects that it was received on 12 July 1995 at 10:00 p.m. and forwarded at 10:10 p.m. Ex. D00064; Dragomir Keserović, T. 14088–14089 (16 May 2011). However, the sequential numbering in the header of Ex. D00064 indicates that it was the next document drafted following Ex. P02203. Ex. D00064; Richard Butler, T. 16355 (8 July 2011). *See also* Ex. P02203.

3717 Dragomir Keserović, T. 14077–14078 (12 May 2011).

3718 Ex. D00064, p. 1. *See also* Dragomir Keserović, T. 14091 (16 May 2011) (agreeing with the Accused that the document was available to "all intelligence organs within the corps and commanders of the operation that was being carried out"). *See also* PW-057, T. 15556 (closed session) (15 June 2011).

3719 Ex. D00064, p. 2. Although Momir Nikolić did not recall having received this instruction at the Bratunac Brigade, he noted that it was sent to all security and intelligence organs. Also he was a Duty Officer on 12 July, which he considered to be a further reason for believing that he saw the document and was aware of its contents. Nevertheless he was sure that he did not propose to his commander that all able-bodied men in Potočari be registered. Momir Nikolić, T. 12513 (7 April 2011), T. 12610–12612 (12 April 2011). Mikajlo Mitrović, however, indicated that it was extremely unlikely that a security organ would not receive a document sent by encoded

(iv) 13 July 1995

934. By early morning on 13 July, the Accused had arrived in Borike, on the outskirts of Žepa enclave.[3720] Around noon, he attended a meeting at Bokšanica, which was intended to address the issue of the evacuation of Žepa.[3721] Mujo Omanović and Hamdija Torlak, the Bosnian Muslim representatives of the Žepa War Presidency, as well as Rajko Kušić, the Commander of the Rogatica Brigade, were also in attendance.[3722] As the meeting began, the Accused said in effect that "Srebrenica ha[d] fallen and now it [was] Žepa's turn", and that he was offering that "all of you [can] leave Žepa, to be evacuated, get on the buses and leave".[3723] The Accused told those present that the only alternative to the evacuation of Žepa was the use of military force against the enclave.[3724]

935. The Bosnian Muslim representatives said that they were authorised to resolve the problem of Žepa peacefully if five guarantees were met; the VRS rejected their request for a guarantee of three days for consultations.[3725] The meeting was short and lasted approximately one hour because the Accused had said that the evacuation was the only issue on the agenda and the meeting ended when the Bosnian Muslim representatives said that they were not authorised to discuss details of any possible evacuation.[3726] The VRS demanded that all necessary consultations regarding the evacuation be completed in time for it to begin by 3:00 p.m. on that day.[3727]

936. Meanwhile, around 2:00 or 3:00 p.m., Rogatica Brigade teleprinter operator Danko Gojković sent a document, Exhibit P00125, under the name of Lieutenant-Colonel Milomir Savčić,

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telegram. Mikajlo Mitrović, T. 15070–15071 (2 June 2011). Similarly, Milenko Todorović agreed that the document would have been received at the Eastern Bosnia Corps. Milenko Todorović, T. 12978–12980 (18 April 2011). *See also* PW-057, T. 15553 (15 June 2011).

3720 Milomir Savčić, Ex. P02418, PT. 15247, 15249, 15251, 15256 (12 September 2007). Savčić testified that the Accused was in the Borike sector by the time he spoke with Malinić on 13 July 1995 and that the Accused was aware of the events in Nova Kasaba on that day, if only from the conversation that he had with Malinić. During the early morning hours of 13 July, Malinić told Savčić that there were two or three prisoners of war who had surrendered in the Nova Kasaba sector. Milomir Savčić, Ex. P02418, PT. 15249–15251 (12 September 2007). Later that day, Malinić called to alert Savčić that a large stream of people were surrendering who were mainly members of the 28th Division, and Malinić felt he could no longer protect them. Milomir Savčić, Ex. P02418, PT. 15252 (12 September 2007). *See also* Ex. P00104, p. 12 (map indicating the location of Žepa and Borike).

3721 *See supra* paras. 604–605.

3722 *See supra* paras. 605–606.

3723 *See supra* para. 607. Torlak asked whether that meant, for example, that a 35-year old man could leave with his family and the Accused answered, "Yes, of course". Hamdija Torlak, T. 4294 (23 August 2010). *See also* Hamdija Torlak, T. 4642–4643 (31 August 2010).

3724 *See supra* para. 609.

3725 *See supra* paras. 608–609. The guarantees sought by the Bosnian Muslims for the evacuation were only discussed after the Accused had presented the alternatives of evacuation and the use of military force against the enclave. Hamdija Torlak, T. 4845 (2 September 2010). *See also* Hamdija Torlak, T. 4294 (23 August 2010), T. 4843–4844 (2 September 2010) ("[The Accused] wanted a complete evacuation of the whole civilian population.")

3726 Hamdija Torlak, T. 4295 (23 August 2010).

3727 *See supra* para. 609.

the Commander of the 65th Protection Regiment,[3728] to Malinić, the Commander of its MP Battalion,[3729] stating that, in light of the fact that over 1,000 members of the 28th Division were being detained in the Kasaba area under the control of the 65th Protection Regiment's MP Battalion, the Accused "propose[d]" the following measures:[3730]

> 1. Prohibit access to all unauthorised individuals, filming and photographing of prisoners;
>
> 2. Prohibit traffic for all United Nations vehicles en route Zvornik–Vlasenica until further notice. [...]
>
> 3. Commander of the Military Police Battalion shall take measures to remove war prisoners from the main Milići–Zvornik road, place them somewhere indoors or in an area protected from observation from the ground or the air.
>
> 4. Once the Commander of the Military Police Battalion receives this order he shall contact General Miletić and receive from him additional orders and verify if the proposal has been approved by the Commander of the [VRS Main Staff].[3731]

937. The Accused challenges the authenticity of Exhibit P00125 on several bases: that the Prosecution's explanation of the document's chain of custody is insufficient to preclude the possibility that the document was added to the "Drina Corps collection" and is not authentic;[3732] that no witnesses could confirm the authenticity of the "Atlantida" binder, in which the document was found;[3733] that neither Savčić nor Malinić could confirm its authenticity;[3734] and that irregularities exist in the form of this specific document.[3735] Each of these points will now be considered in turn.

938. The "Atlantida" binder is so-called because its cover page reads "Atlantida".[3736] It is part of the "Drina Corps collection" of documents,[3737] which the Tribunal Field Office in Zagreb received on 17 December 2004, after the Serbian authorities had handed them over to the RS authorities.[3738]

3728 *See supra* para. 113.
3729 *See supra* para. 114.
3730 The document was also sent to the Commander of the Main Staff of the VRS, Mladić, for his information, and to the Assistant Commander for Morale, Religious, and Legal Affairs of the Main Staff of the VRS, Gvero, for his information. Ex. P00125; Richard Butler, T. 16391–16394 (11 July 2011). *See supra* paras. 82–83. Butler testified that although the first and second proposals conformed with the Accused's position, the third and fourth measures were in line with Savčić's position as the Commander of the 65th Protection Regiment, as they constituted Savčić's order to his subordinate, Malinić. Richard Butler, T. 16393–16394 (11 July 2011). According to Butler, the Accused would have been aware of and approved the third measure, given that it is consistent with the first and second measures the Accused himself proposed. Richard Butler, T. 16394–16395 (11 July 2011); Ex. P00125.
3731 Ex. P00125. *See also* Tomasz Blaszcyk, T. 1466–1467 (27 April 2010).
3732 Accused Final Brief, para. 225.
3733 Accused Final Brief, paras. 225, 451.
3734 Accused Final Brief, para. 223.
3735 Accused Final Brief, paras. 452–453.
3736 Tomasz Blaszczyk, T. 1468–1470 (27 April 2010); Ex. P00469. Ex. P00125 was the final document in the binder. Tomasz Blaszczyk, T. 1470 (27 April 2010).
3737 Tomasz Blaszczyk, T. 1467, 1469 (27 April 2010).
3738 Tomasz Blaszczyk, T. 1410–1412 (26 April 2010).

Tomasz Blaszczyk, an OTP investigator,[3739] gave a thorough account of the chain of custody from then on[3740] and outlined the movements of the collection from the Drina Corps Command in Vlasenica in 1996 to the point at which it was handed over to the OTP.[3741] Even though the OTP did not have control over the collection before it came into its possession, Blaszczyk's testimony provides strong evidence for its reliability and authenticity.[3742] The issue is then whether there is a sufficient basis for finding that the documents in the "Atlantida" binder for some reason are an exception to this.

939. The "Atlantida" binder contains documents from the Rogatica Brigade,[3743] but neither Gojković nor Đoko Razdoljac, the Brigade Assistant Commander for Logistics,[3744] were able to shed light on the cover page containing the word "Atlantida".[3745] However, the fact that it has not been established why the term "Atlantida" appears on the cover does not reduce the reliability of the actual documents contained therein. Given the level of authenticity of the "Drina Corps collection" as testified to by Blaszczyk,[3746] the Majority, Judge Nyambe dissenting, finds that there is no reasonable ground for finding that the documents from "Atlantida" binder are not authentic.

940. Malinić testified that he could not remember having received Exhibit P00125,[3747] and Savčić testified that he could not recall having drafted it, although he could not exclude the possibility that he did.[3748] While neither witness could personally authenticate Exhibit P00125, the Majority considers that such inability is not necessarily dispositive of the document's authenticity. Moreover, the Majority has approached these two witnesses' evidence with caution, as they too were closely connected to this document and thus both had an incentive to minimise or question its authenticity. The Majority will therefore proceed to examine the other evidence concerning the aspects of the document's format which have been challenged by the Accused.

3739 Tomasz Blaszczyk, T. 1408 (26 April 2010).
3740 Tomasz Blaszczyk, T. 1411–1413 (26 April 2010).
3741 Tomasz Blaszczyk, T. 1410–1411 (26 April 2010), T. 1416–1420 (27 April 2010).
3742 *See, e.g.*, Tomasz Blaszczyk, T. 1421–1422 (27 April 2010). Blaszczyk testified that the "Drina Corps collection" was established as authentic through witness review and identification, handwriting expert analysis, and receipt of identical copies of certain documents from other sources. *Ibid.*
3743 Tomasz Blaszczyk, T. 3677–3678, 3681–3682 (8 July 2010); Ex. P00468, pp. 10–26. The Accused indicates that, apart from three documents that had been produced by logistics organs, he himself wrote the rest of the telegrams while he was at the Rogatica Brigade. Tomasz Blaszczyk, T. 3682 (8 July 2010).
3744 *See supra* para. 137.
3745 Danko Gojković, T. 2820, 2845–2846 (16 June 2010); Danko Gojković, Ex. P00496, PT. 10715–10716 (27 April 2007); Đoko Razdoljac, T. 8231 (30 November 2010).
3746 *See supra* n. 3742. Blaszczyk acknowledged the possibility that a document or binder had been added to the Drina Corps collection. Tomasz Blaszczyk, T. 3790 (9 July 2010). However, no evidence has been presented indicating that this is the case.
3747 Zoran Malinić, T. 15390 (9 June 2011).
3748 Milomir Savčić, Ex. P02418, PT. 15262–15263 (12 September 2007).

941. The Accused first challenges the fact that the header of Exhibit P00125 refers to an IKM of the 65th Protection Regiment at "Borike at 1400 hours", which he suggests was "non-existent".[3749] Indeed, Savčić testified that he did not set up a 65th Protection Regiment IKM at Borike.[3750] However, the IKM of the Rogatica Brigade was located in Borike;[3751] and Savčić testified that both he and the Accused were present in the Borike area on 13 July.[3752] Additionally, Blaszczyk explained that "usually where the commander is present in the [area of responsibility] there is a forward command post [...] [w]hether this is officially called [a] forward command post of [a] particular unit or [a] forward command post of [an]other unit co-operating with this particular unit, this is [a] different question".[3753] The Majority thus does not consider that the reference to the IKM of the 65th Protection Regiment at Borike casts doubt upon the authenticity of Exhibit P00125.

942. The Accused's second challenge relates to the fact that Exhibit P00125 does not bear the sender's handwritten signature.[3754] However, Gojković, one of the Rogatica Brigade's teleprinter operators who worked in an office approximately 50 to 70 metres away from the Rogatica Brigade Command,[3755] identified his handwriting in a notation at the bottom left corner of the page.[3756] Gojković explained that someone likely brought the document to him in order for it to be typed into the teleprinter and transmitted.[3757] Additionally, the testimony of expert witness Kathryn Barr establishes that Exhibit P00125 was produced by a typewriter at the Rogatica Brigade Command.[3758] The Majority notes, however, that the header of the message indicates that its

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3749 Accused Final Brief, para. 452. *See* Ex. P00125; Tomasz Blaszczyk, T. 1466, 1490 (27 April 2010).

3750 Milomir Savčić, Ex. P02418, PT. 15262 (12 September 2007); Milomir Savčić, T. 15755–15756, 15803–15804, 15814 (21 June 2011). Savčić testified that there was "no need" for him to do so because he lacked the space, resources, and personnel to do so. Milomir Savčić, T. 15755 (21 June 2011). *See also* Milomir Savčić, T. 15804 (21 June 2011) ("[I]t is impossible to establish a command post either a main command post or an ancillary command post or a forward command post with one man, irrespective of who that man is".).

3751 *See supra* para. 136. Savčić testified that the the Rogatica Brigade IKM was in Sjeversko, but that Borike was a more general and better-known term. Milomir Savčić, T. 15808–15809 (21 June 2011); Milomir Savčić, Ex. P02418, PT. 15246–15247, 15249 (12 September 2007). *See also* Tomasz Blaszczyk, T. 3724 (8 July 2010).

3752 Milomir Savčić, Ex. P02418, PT. 15247, 15249, 15251, 15256 (12 September 2007). Savčić testified that he used the RRU-1 phone located in the Pinzgauer terrain vehicle at the Rogatica Brigade IKM. Milomir Savčić, T. 15805–15806 (21 June 2011). He also testified that he led part of a unit that was present in Borike at the time. Milomir Savčić, Ex. P02418, PT. 15262 (12 September 2007); Milomir Savčić, T. 15808 (21 June 2011).

3753 Tomasz Blaszczyk, T. 3701 (8 July 2010).

3754 Accused Final Brief, para. 453.

3755 Danko Gojković, Ex. P00496, PT. 10718 (27 April 2007); Ex. P00468, pp. 2–3, 7.

3756 Ex. P00125; Ex. P00468, pp. 21–22, 24–25; Danko Gojković, Ex. P00496, PT. 10716–10717 (27 April 2007); Danko Gojković, T. 2817–2818 (16 June 2010). Gojković confirmed that the document bears his original signature. Danko Gojković, T. 2901–2902 (17 June 2010).

3757 Danko Gojković, T. 2817 (16 June 2010). *See also* Tomasz Blaszczyk, T. 1466 (27 April 2010). Blaszczyk explained that although Gojković had received Ex. P00125 in its current form and typed its contents into the teleprinter, the Prosecution was granted only limited access to the full archive of the "Drina Corps collection" and lacked access to the relevant teleprinter and any copies or tapes produced by it, as well as the log book of documents sent by the Rogatica Brigade communications officer. Tomasz Blaszczyk, T. 3691, 3693 (8 July 2010).

3758 After comparing Exhibit P00125 to two documents from the Rogatica Brigade, handwriting analysis expert Kathryn Barr concluded that Exhibit P00125 and one of the other documents (Ex. P00517) were produced by the same machine, and that there was "strong evidence" that the third document (Ex. P00518) was produced on the same machine as well. Ex. P01972, pp. 3–4; Kathryn Barr, T. 10919–10920 (8 March 2011). Both Ex. P00517 and Ex. P00518 are documents signed by Rogatica Brigade Chief of Staff Lelek, whose office contained a

content originated at the Borike IKM,[3759] which did not have a teleprinter.[3760] Thus, in order to use a teleprinter to send a telegram from the IKM to the VRS Main Staff,[3761] it would have been necessary to use the Rogatica Brigade's communications facilities, and indeed, Savčić testified that while he was in the area, the 65th Protection Regiment "used exclusively" the typewriters and encryption facilities of the Rogatica Brigade.[3762] In addition, the Majority recalls that the Rogatica Brigade Command maintained a telephone connection with the Borike IKM,[3763] and notes that a document whose contents had been dictated over the phone to a recipient at the Rogatica Brigade Command would naturally not bear the physical signature of the sender.

943. Although both Savčić and Malinić expressed serious doubts that a teleprinter operator would accept and transmit an "unsigned" document,[3764] Gojković confirmed that his signature under the handwritten word "Delivered" indicated that he typed the document into a teleprinter and transmitted it at 3:10 p.m.[3765] Additionally, the Majority recalls Blaszczyk's testimony that had Exhibit P00125 been handed to Gojković by a superior officer from the Rogatica Brigade Command, Gojković would have simply sent it.[3766]

944. In light of the evidence discussed above, the Majority does not view the absence of Savčić's signature on Exhibit P00125 as an indication that it lacks authenticity.

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typewriter and was located in the command building approximately 50–70 metres away from Gojković's office. Danko Gojković, T. 2880–2881 (16 June 2010); Danko Gojković, Ex. P00496, PT. 10718–10719 (27 April 2007). Barr noted that all three documents were produced using a traditional typebar typewriter and exhibited the same font and character spacing. Ex. P01972, p. 3; Kathryn Barr, T. 10918 (8 March 2011). Barr also noted other forensic similarities in certain typed characters on each of the three documents. Ex. P01972, pp. 3–4; Kathryn Barr, T. 10918–10919 (8 March 2011). *See also* Danko Gojković, T. 2815–2817, 2822, 2825 (16 June 2010); Tomasz Blaszczyk, T. 3690–3691 (8 July 2010) (testifying that Exhibit P00125 was typed on a typewriter rather than a teleprinter).

[3759] Ex. P00125.

[3760] Ex. P00468, pp. 23–24; Danko Gojković, Ex. P00496, PT. 10714 (27 April 2007); Danko Gojković, T. 2817–2818 (16 June 2010). *See also* Milomir Savčić, T. 15823 (22 June 2011) (testifying that he did not have access to a teleprinter himself).

[3761] Milomir Savčić, T. 15823–15824 (22 June 2011) (testifying that it would have been possible to send a telegram to the Main Staff using the Rogatica Brigade communications facilities).

[3762] Milomir Savčić, T. 15842 (22 June 2011). *See supra* paras. 136–139.

[3763] Ex. P00468, pp. 23–24.

[3764] Milomir Savčić, T. 15811–15812, 15815–15816 (21 June 2011); Zoran Malinić, T. 15390–15391 (9 June 2011).

[3765] Danko Gojković, T. 2818, 2877 (16 June 2010). Gojković later elaborated that his signature and notation "is for me a confirmation from the other side, from my fellow teleprinter operator on the other side, who confirmed that [the document sent from the teleprinter] was well received". Danko Gojković, T. 2824–2825 (16 June 2010). Gojković rejected the Accused's suggestion that he might have been influenced by the Prosecution into stating that his signature was authentic. Danko Gojković, T. 2843 (16 June 2010), T. 2902 (17 June 2010). Blaszczyk testified that, based on his having interviewed Gojković and heard Gojković's testimony, he had concluded that Exhibit P00125 was an original document. Tomasz Blaszczyk, T. 3721–3722 (8 July 2010). Gojković also made a notation similar to the one on Exhibit P00125 indicating transmission on a document which was typed at the Rogatica Brigade Command and signed by Rogatica Brigade Chief of Staff Lelek. Ex. P00517.

[3766] Tomasz Blaszczyk, T. 3687–3688 (8 July 2010).

945. Both Savčić and Malinić question the authenticity of Exhibit P00125 on the basis that its content is illogical, as it combines an order with a proposal.[3767] In the absence of any evidence indicating that such combinations were prohibited or even rare, however, especially given the exigencies of war, the Majority disagrees. Moreover, the Majority recalls that both Savčić and the Accused were present in the Borike area on 13 July,[3768] that Savčić was the Commander of the 65th Protection Regiment whose duties encompassed issuing orders to the Commander of its MP Battalion,[3769] and that the Accused's duties included making proposals to Mladić within the scope of his professional expertise.[3770] Finally, the Majority recalls its cautious approach to the analysis of the testimony of Savčić and Malinić regarding this document.[3771] The Majority therefore does not consider the concerns they expressed about the document's combined format to be problematic.

946. The Accused's third challenge to the authenticity of Exhibit P00125 relates to the fact that Malinić suggested that he had not acted upon the orders contained therein.[3772] In attempting to illustrate that he did not carry out the order regarding the removal of the prisoners, Malinić testified that "all prisoners who were at the stadium [in Nova Kasaba] at 1400 hours remained there until their departure; that is to say, until the arrival of vehicles and their transport".[3773] As the Chamber has already found, however, the prisoners left the Nova Kasaba Football Field in the early evening and were transported to either Kravica Warehouse or to Bratunac town,[3774] where they were held overnight in buildings or vehicles.[3775] In addition, Mladić issued an order in the evening of the same day containing instructions regarding control of information about prisoners and prohibition of traffic which are very similar to what was proposed in Exhibit P00125.[3776] It is therefore evident to the Majority that the Accused's proposals in Exhibit P00125 were acted upon.

3767 Milomir Savčić, T. 15814–15815 (21 June 2011) ("[Y]ou can't have a proposal and an order at the same time in the same document."); Zoran Malinić, T. 15368 (9 June 2011) ("this document is an order for me [...] I think that if you look at one and the other structure, it cannot be an order, and the assistant commander for security and intelligence affairs of the Main Staff proposes the following measures. If it's an order, it just states what needs to be done [...] I cannot see from this whether this is an order for me to do that or if it's a proposal").

3768 *See supra* para. 934.

3769 *See supra* para. 113.

3770 *See supra* para. 93. *See also* Tomasz Blaszczyk, T. 1493 (27 April 2010) (testifying that it was logical for these elements to be combined because Savčić was the Commander of the 65th Protection Regiment and the Accused was with him in Borike).

3771 *See supra* para. 940.

3772 Accused Final Brief, para. 456 (referring to Zoran Malinić, T. 15368–15370 (9 June 2011)). Malinić further testified that "I am not saying that the order is not legitimate [...] it is my conclusion that either things were not done properly or the document was not drafted properly, but it was not in keeping with standard practice of publishing or issuing orders [...] this document did not have the force of an order until it was approved. In other words, these were just proposed measures [...] an order for implementation needs to be approved by the commander of the VRS Main Staff." Zoran Malinić, T. 15370–15371 (9 June 2011).

3773 Zoran Malinić, T. 15369 (9 June 2011).

3774 *See supra* para. 339.

3775 *See supra* para. 387. *See also* Ex. P01544b (confidential) (an intercept at 8:10 p.m. on 13 July in which someone is recorded as stating that Karadžić has said: "all the goods must be placed in warehouses before twelve tomorrow").

3776 Ex. P02420 (an order typesigned by Mladić with the date of delivery given as 10:30 p.m. on 13 July).

947. On the basis of the analysis set out above, the Majority, Judge Nyambe dissenting, concludes that Exhibit P00125 is authentic.

948. At around 6:00 p.m. on 13 July, the Accused sent a report to the Sector for Intelligence and Security Affairs, the Drina Corps Intelligence Branch and its Security Organ, the Drina Corps IKM, and to Krstić personally, in which he gave an account of the meeting with the Bosnian Muslim representatives of the Žepa War Presidency.[3777] At the time the Accused was still awaiting a response from the Bosnian Muslims; he stated that if the Bosnian Muslims continued to postpone the deadline for evacuation, the VRS would demand to keep some able-bodied men.[3778] The Accused reported:

> We believe that with our proposal for evacuation we created disorganization in their ranks. All refugees in Žepa, as well as some local residents chose the evacuation. We expect that some Muslim soldiers are going to desert their defence lines in order to organize their families for evacuation.[3779]

949. At approximately 10:30 p.m. on 13 July, the Accused sent a telegram to the VRS Main Staff and to Gvero personally which contained the following language:

> If you are unable to find adequate accommodation for all [prisoners of war] from Srebrenica, we hereby inform you that space with /unknown word/[3780] has been arranged for 800 prisoners of war in the [area of the Rogatica Brigade] in Sjemeč.[3781]

The Accused stated that the Rogatica Brigade could "guard them with its own forces, and would use them for agricultural work".[3782] The Accused concluded by mentioning that "it would be best if this is a new group which has not been in contact with the other [POWs]".[3783]

950. Late that evening,[3784] the Accused wrote a report to the VRS Main Staff and Mladić personally, the Sector for Intelligence and Security Affairs, the Drina Corps Command and its Security Department, the Drina Corps IKM, and Krstić personally, as well as the Commands of the

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3777 Ex. P00491. *See also supra* paras. 604–611.

3778 Ex. P00491, p. 3. *See also supra* paras. 604–611.

3779 Ex. P00491, p. 3.

3780 Čarkić testified that the "unknown word" in the English translation, which is "palacama" in the BCS original, referred to simple wooden frames on which bedding could be placed like a pallet. D00049; Zoran Čarkić, T. 12726 (13 April 2011).

3781 Ex. D00049; Danko Gojković, T. 2852–2854, 2856–2857 (16 June 2010) (testifying that someone brought the telegram to him and he typed it into the teleprinter and sent it, afterwards confirming its receipt with his signature in the upper right corner of the teleprinted version). Čarkić testified that he supposed that Exhibit D00049 refers to agricultural buildings in Sjemečko Polje on the road from Borike to Višegrad in Sjemeč. Zoran Čarkić, T. 12727–12741 (13 April 2011); Ex. P00104, p. 12; Ex. P02170; Ex. P02171; Ex. P02172.

3782 Ex. D00049, p. 1.

3783 Ex. D00049, p. 2.

3784 There are two versions of the report which is dated 13 July and type-signed by the Accused, Exhibit P00145 and Exhibit P00123. One report refers to a meeting scheduled for 9:00 p.m. which did not take place. "0050 hrs." is handwritten on one of them and on the other the date of receipt is given as 10:55 a.m. on 14 July. *See also* Danko Gojković, T. 2806, 2808 (16 June 2010). The Chamber infers that the Accused wrote the report on the evening of 13 July after 9:00 p.m.

65th Protection Regiment and the 67th Communications Regiment,[3785] in which he stated that the VRS had not had further contact with the Bosnian Muslim representatives of Žepa that day, though they had been scheduled to meet at 9:00 p.m.[3786] According to the Accused, the Bosnian Muslim representatives had informed the VRS through UNPROFOR that they were "active during the day informing the population about the conditions of their evacuation from Žepa, and they were forced to do that because the Government in Sarajevo decided that they should not evacuate".[3787] The Accused reported that although the VRS had informed the Žepa leadership through UNPROFOR that the process of evacuation and weapons surrender had to start at 9:00 a.m. on 15 July 1995 and that if the Žepa leadership rejected the evacuation under the conditions that had been set, the VRS was planning to start combat activities.[3788] In closing, the Accused suggested the engagement of forces from the Srebrenica front "to capture Žepa within 21 hours in order to avoid the condemnation and reaction by the international community".[3789] This would be possible, he conjectured, stating "our past activities have completely disorganised their system and civilians have already started gathering around UNPROFOR checkpoints and bases".[3790]

951. Meanwhile, word that a large number of ABiH POWs were expected to arrive at the Batković Collection Centre[3791] had spread amongst the friends and relatives of members of the Eastern Bosnia Corps who were being held by the ABiH, who in turn "besieged the commanders of the VRS units where their family members had served", demanding an immediate exchange.[3792] At the behest of his commander, Simić,[3793] Todorović called the Accused to check when the ABiH prisoners would be arriving.[3794] The Accused replied that all preparations should cease.[3795] The Chamber finds that the Accused gave this reply at the earliest on 13 July 1995, but it is not able to make a finding as to the precise day on which he did so.[3796]

3785 Ex. P00145, p. 1; Ex. P00123, p. 1. *See also supra* paras. 604–611.
3786 Ex. P00145, p. 1; Ex. P00123, p. 1.
3787 Ex. P00145, p. 1; Ex. P00123, p. 1.
3788 Ex. P00145, p. 1; Ex. P00123, p. 2. *See also supra* paras. 604–611.
3789 Ex. P00145, p. 2; Ex. P00123, p. 2. *See also supra* para. 611.
3790 Ex. P00145, p. 2; Ex. P00123, p. 2.
3791 *See supra* paras. 554, 931.
3792 Milenko Todorović, T. 12941–12942 (18 April 2011). *See also* Ex. P02183, pp. 37–38.
3793 Novica Simić was the Eastern Bosnia Corps Commander. *See supra* n. 218.
3794 Milenko Todorović, T. 12942 (18 April 2011); *See also* Ex. P02183, pp. 37–38. Ljubomir Mitrović also testified that within two or three days of having been ordered to prepare the Batković Collection Centre, the commander of the collection centre "inquired why there were no prisoners coming"; Mitrović then called the president of the Drina Corps Commission for POW Exchange, who replied that Mitrović "had to do something or there would be nothing out of what had been agreed". Ljubomir Mitrović, T. 15174–15175 (7 June 2011). The next day, Todorović informed Mitrović that 20 wounded men from Srebrenica had arrived. *Ibid.*
3795 Milenko Todorović, T. 12942 (18 April 2011). *See also* Ex. P02183, p. 38.
3796 During his interview with the Prosecution in early 2010, Todorović stated that he was told to halt preparations for the prisoners' arrival between 24 and 48 hours after receiving the instruction to prepare for it. Ex. P02183, pp. 37–38, 40. During his testimony, he insisted that it was "more than 24 hours", and eventually stated that "[w]hether it was two, three, or even five days, that is something I can't tell you". Milenko Todorović T. 12982–12983

(v) 14–15 July 1995

952. On the morning of 14 July, Salapura left a message at the Standard Barracks that "Drago [Nikolić] and Beara are to report to Golić",[3797] an intelligence officer in the Drina Corps.[3798] Salapura testified that he was only passing along someone else's message and suggested that it could have originated with the Accused or Mladić.[3799] Although the Prosecution submits that because Nikolić, Beara, and Golić were all professional subordinates of the Accused, it is "most likely" that the message originated from the Accused, rather than Mladić,[3800] the Chamber declines to make a finding to this effect.

953. At approximately 10:45 a.m. on 14 July 1995, the Accused issued a telegram that was sent to the Drina Corps Command and all subordinated Drina Corps units, alerting them to the presence of an unmanned aircraft in the Drina Corps airspace since 5:00 a.m. that morning.[3801] The Accused warned all units in the area about the aircraft's presence, to camouflage combat equipment immediately after completing an action, to establish radio connections in addition to wires, and to destroy the unmanned aircraft immediately upon sighting.[3802] Immediately thereafter,[3803] the Accused issued another telegram to the Drina Corps Intelligence Section and the Security Organ, the Drina Corps IKM, Krstić personally, and the Command of the 65th Protection Regiment informing the recipients about the unmanned aircraft and the situation on the ground in Žepa stating

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(18 April 2011), T. 12991–12993 (19 April 2011). Todorović reasoned that the task of removing wheat from a hangar where the prisoners would be housed, which was completed, would have taken longer than one day, and that it would have taken longer than 24 hours for the relatives of Bosnian Serb prisoners to have found out that ABiH prisoners were expected and then to start pressuring the Corps Command. Milenko Todorović, T. 12943–12944, 12953, 12983 (18 April 2011), T. 12992 (19 April 2011). *See also* Ex. P02183, p. 37. It is clear from Todorović's testimony that there had not been enough time to make all necessary preparations; no pallets or mattresses had yet been placed in the hangar to accommodate the prisoners, and additional military policemen had not yet been redeployed in order to augment those guarding the Batković Collection Centre already. Milenko Todorović, T. 12950–12953 (18 April 2011). Nevertheless, the Chamber concludes that as the emptying of the hangar was completed and could not have been accomplished on the same day as the instruction was given to prepare the Batković Collection Centre, the earliest date on which Todorović could have received the order to halt preparations would have been sometime on 13 July 1995.

3797 Ex. P01459, p. 41; Petar Salapura, T. 13605–13606 (3 May 2011); Richard Butler, T. 16743 (18 July 2011) (testifying that "Drago" refers to Drago Nikolić).

3798 *See supra* para. 127.

3799 Petar Salapura, T. 13606 (3 May 2011).

3800 Prosecution Final Brief, para. 597.

3801 Ex. P00128 (Rogatica Brigade copy bearing a handwritten indication "Žiža"); Ex. P00121 (Zvornik Brigade copy); Ex. P00147 (5th Mixed Artillery Regiment copy); Ex. P00148 (bearing a handwritten indication "sent to all units"). *See also* Tomasz Blaszczyk, T. 1453–1456 (27 April 2010). "Žiža" was a teletype operator in the Rogatica Brigade. Đoko Razdoljac, T. 8232 (30 November 2010); Danko Gojković, T. 2805–2806 (16 June 2010), T. 2901 (17 June 2010).

3802 Ex. P00128; Ex. P00121; Ex. P00147; Ex. P00148. *See also* Petar Škrbić, T. 18804–18806 (2 February 2012) (characterising the telegram as conveying Mladić's order); Richard Butler, T. 16729–16730 (18 July 2011) (testifying that while issuing this order is not strictly consistent with his role as Assistant Commander and Chief of the Sector for Intelligence and Security Affairs, it reflects the Accused's knowledge of "the broader plan").

3803 Although both Ex. P00124 and Ex. P00128 are marked as having been sent at 10:45 a.m., Ex. P00124 indicates that the "orders for camouflage measures and organization of multiple communications system ha[d already] been

that "[a]ccording to UNPROFOR intelligence the Muslim troops are at the front line and the population took a refuge outside the inhabited place"; he proposed "to commence combat operations as per plan of the Superior Command".[3804] In the telegram, the Accused also conveyed, *inter alia*, that units of the Rogatica Brigade and elements of the 65th Protection Regiment had been in combat readiness since 8:00 a.m., and that OP2 had already been put under VRS control with the aim of "[controlling] the work and the reports that UNPROFOR is making to their superior command".[3805]

954. The attack on Žepa commenced on 14 July.[3806] At approximately 2:00 p.m., the Accused sent a telegram entitled "[p]lacing the UNPROFOR checkpoints under control" to the intelligence and security departments of the VRS Main Staff and the Drina Corps, the Drina Corps IKM, and the 65th Protection Regiment.[3807] In it he reported that he planned to direct the work of the other checkpoints through OP2.[3808] The Accused also informed the recipients that the plan was to "keep the UN checkpoints at current locations in order to protect [their] combat formation from NATO aviation".[3809] After the VRS "effectively co-opted" UKRCoy to assist,[3810] the Accused reported that UNPROFOR had been instructed not to open fire on VRS units and to "simulate the action by shooting into the air if forced to do so by the Muslims".[3811]

955. In a telegram marked strictly confidential sent to the VRS Main Staff and Miletić personally at approximately 5:45 p.m. on 14 July,[3812] the Accused explained that "[i]n order to monitor combat activities around Žepa and have complete review of the Drina Corps Command radio network with brigade commands", it was necessary to incorporate the VRS Main Staff into the Drina Corps Command system with appropriate equipment for crypto-protection.[3813] With this request, the

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issued". Thus, despite the fact that Ex. P00128 bears a strictly confidential number that immediately follows that of Ex. P00124, the Chamber nevertheless infers that Ex. P00128 was sent prior to Ex. P00124.

3804 Ex. P00124, pp. 1–2. *See also* Tomasz Blaszczyk, T. 1457–1458 (27 April 2010).

3805 Ex. P00124, p. 2. *See supra* para. 611, n. 2638.

3806 *See supra* para. 612.

3807 Ex. P00129; Ex. P00149; Tomasz Blaszczyk, T. 1459–1461 (27 April 2010).

3808 Ex. P00129, p. 2.

3809 Ex. P00129, p. 2. When asked whether the Accused's proposal involved using UNPROFOR personnel as human shields, Trivić initially appeared to agree, but later he said: "It was by their very presence that they would protect, and that's what the last sentence suggests when it talks about the formation. It's not about us using them as a human shield; it's their presence that would then shield us from any air-strikes, not us using them." Mirko Trivić, T. 8774–8777 (10 December 2010).

3810 Richard Butler, T. 16731 (18 July 2011).

3811 Ex. P00129, pp. 1–2.

3812 Ex. P00480; Danko Gojković, T. 2836–2837 (16 June 2010) (identifying his initials at the bottom of Ex. P00480 and his signature at the top).

3813 Ex. P00480. The Accused made such a request to the VRS Main Staff because he could not unilaterally seize such equipment from the brigades. Richard Butler, T. 16731–16732 (18 July 2011).

Accused sought to improve the Main Staff's ability to be informed about the activities of the Drina Corps and its subordinate brigades in the Žepa operation.[3814]

956. The following day, at 11:09 p.m. on 15 July 1995, the Accused issued a "very urgent" order to transfer a 5,000 Watt loudspeaker van to the Rogatica garrison by 3:00 p.m. on 16 July 1995.[3815]

(vi) 16–17 July 1995

957. In the morning of 16 July at 10:00 a.m., the Accused had a telephone conversation with Miletić[3816] about two urgent telegrams that he had sent from the Drina Corps IKM in Krivače.[3817] The Accused told Miletić that it was better to communicate with him by telegram through the Drina Corps IKM.[3818] He instructed Miletić to pass this information on to Salapura and others in the Sector for Intelligence and Security Affairs.[3819]

958. In the evening of 16 July, the Accused was at the VRS Main Staff Headquarters at Crna Rijeka with Mladić.[3820] Others present included the Accused's subordinate Keserović, as well as Miletić and Colonel Ljubomir Obradović, Chief of Operations in the VRS Main Staff Administration for Operations and Training.[3821] Mladić ordered Keserović to take command of several units in order to speed up an ongoing "sweep operation" in the area of responsibility of the Bratunac Brigade.[3822] Keserović turned to the Accused asking for help in avoiding "this impossible

3814 Richard Butler, T. 16732 (18 July 2011).
3815 Ex. P00479.
3816 *See supra* para. 84.
3817 Ex. P00394a . The Krivače IKM was referred to by its code-name "Uran". *See supra* n. 397. The Accused was referred to by his nickname "Tošo". *See supra* paras. 194, 921. *See also* Richard Butler, T. 17449 (31 August 2011); Ex. P00763, p. 1; Mirko Trivić, Ex. P01197, PT. 11871 (21 May 2007) (stating that the Drina Corps IKM did not move from Krivače to Gođenje before 19 July).
3818 Ex. P00394a. The Accused indicated in the telephone conversation that the line on which they were currently speaking was not secure. *Ibid. See also* Petar Salapura, T. 13615 (3 May 2011) (testifying that he was told that every communication with the Accused should go through the Rogatica Brigade). Several documents show that the Accused had access to secure communications at the Drina Corps IKM. Ex. P02552 (a handwritten report sent to the Drina Corps IKM and the 67th Communication Regiment ("Elektron"), which bears no signature but reads "Informed by TOLIMIR", dated 16 July 1995); Ex. P00763, p. 1; Richard Butler, T. 16845–16847 (19 July 2011); Ex. P00836; Ex. P00836a (an intercept conversation between the VRS Main Staff Duty Officer and Mladić at 4:15 p.m. confirming that the Accused could be reached from the Main Staff as the VRS Main Staff Duty Officer stated that he "just sent a telegram to Tošo").
3819 *See supra* para. 103. In the intercept the Accused is recorded as having said "Call him and then tell Pepo and my /?men?/ .... That they can send me telegrams this way and I can send it to them." The Prosecution and the Accused agreed that "my /?men?/" should read "those men of mine". Ex. P00394a, p. 1; Petar Salapura, T. 13613–13614 (3 May 2011).
3820 Dragomir Keserović, T. 13924–13926 (10 May 2011), T. 13948–13950, 13954 (11 May 2011).
3821 Dragomir Keserović, T. 13924–13926 (10 May 2011), T. 13954 (11 May 2011). As Chief of the MP, Keserović fell under the control of the Accused. Richard Butler, T. 16313 (8 July 2011). *See also supra* para. 105. For Obradović's position in the VRS, see *supra* n. 238.
3822 *See supra* para. 517.

task"—a task which, according to Keserović, was not suited for a single lieutenant-colonel.[3823] The Accused agreed with Keserović, had a word with Mladić, and informed Keserović that while Mladić had not relieved Keserović of the obligation to go to the Bratunac area to inspect the zone, he had agreed that Keserović would not take over command of units.[3824] In addition, the Accused gave Keserović two instructions: (1) to find in Bratunac Lieutenant-Colonel Radoslav Janković, a desk officer in the Analysis Section of the VRS Main Staff Intelligence Administration,[3825] and to convey to him the message that weapons and other equipment that had been confiscated from DutchBat at checkpoints as they were entering Srebrenica should be returned; and (2) to tell the DutchBat Commander that the plan of evacuation had been changed such that the convoy would go through Serbia rather than via the Sarajevo Airport.[3826] The Accused further told Keserović that it would be Radoslav Janković's obligation to supervise the evacuation of the wounded from the Bratunac Hospital, which would be organised by the ICRC.[3827]

959. Before Keserović set off for Bratunac and Nova Kasaba[3828] to convey his instructions to Radoslav Janković, he was again met by the Accused at the VRS Main Staff Headquarters, who informed him that Beara was in the zone of responsibility of the Drina Corps.[3829]

960. On 16 July at 9:43 p.m., the Accused was also dealing with "transportation issues" in a conversation with Rajko Krsmanović, Drina Corps Chief of the Transportation Service in Rear Services.[3830]

961. On 17 July, the Accused sent a handwritten report from the Drina Corps IKM at Krivače summarising a radio conversation that occurred at 2:00 p.m. that day between Kušić and Palić concerning the situation in Žepa.[3831] The Accused reported that Kušić again requested that Palić

3823 Dragomir Keserović, T. 13926–13929 (10 May 2011), T. 13955 (11 May 2011). Keserović sought the Accused's assistance because the Accused was Keserović's second commanding officer in the hierarchy, and Keserović's first commanding officer, Beara, was not present. Dragomir Keserović, T. 13928 (10 May 2011).

3824 Dragomir Keserović, T. 13955–13956 (11 May 2011).

3825 *See supra* para. 115.

3826 Dragomir Keserović, T. 13957 (11 May 2011).

3827 Dragomir Keserović, T. 13957 (11 May 2011).

3828 Keserović testified that he met the Accused "on the 16th, in the evening hours, or maybe on the 17th, in the morning, before I departed, I'm not sure about that". Dragomir Keserović, T. 13968 (11 May 2011).

3829 Dragomir Keserović, T. 13968 (11 May 2011), T. 14137–14138 (16 May 2011).

3830 Ex. P02656 (a summary of an intercept in which "Tošo" is discussing the problem of transportation with Krsmanović who mentioned 10 buses and 14 trucks "in relation to the means that had not yet been requisitioned)"; Petar Skrbić, T. 18612–18617 (31 January 2012), T. 18751–18755 (2 February 2012); Ex. P02864, p. 2; Ex. P02865; PW-029, T. 17893–17896, 17901–17902 (13 September 2011). *See supra* n. 408. Notwithstanding Petar Škrbić's testimony that there were several VRS Officers called "Krsmanović" and others in the VRS who were called Tošo, the Chamber finds that particularly in light of the subject matter of the discussion and Krsmanović's position the discussion summarised was between the Accused and Rajko Krsmanović of the Drina Corps.

3831 Ex. P02207. *See supra* para. 615. This document shows that the Drina Corps IKM at Krivače was the nearest point of secure communication for the Accused at the time. Richard Butler, T. 16850 (19 July 2011).

disarm his troops, surrender the weapons and start with the evacuation of the civilians, which Palić refused.[3832]

962. In an intercepted conversation of 17 July at 8:55 p.m. between Radoslav Janković, who was at the Bratunac Brigade, and Trivić, who was at the Drina Corps Command,[3833] Radoslav Janković's proposal on how to deal with a particular situation is discussed.[3834] Radoslav Janković was directed to follow an order by Miletić to send his proposal to the Accused "urgently by code", following which Mladić and the Accused would make a decision.[3835]

(vii) 18 July 1995

963. An intercepted conversation between Radoslav Janković and an unknown person, named Čiča, in the morning of 18 July 1995 at 8:00 a.m. records that Radoslav Janković was in communication with the Accused as he stated that: "Look, I just called Tolimir and the people over there. He sent the paper last night and the implementation starts today, or maybe tomorrow, and he said – nothing without him".[3836] On the same day, a report type-signed by the Accused and about, *inter alia*, enemy activities and UNPROFOR operations was sent from the Sector for Intelligence and Security Affairs.[3837]

964. A hand-written report originally drafted by Radoslav Janković[3838] and sent at 5:00 p.m. on 18 July to the Sector for Intelligence and Security Affairs and the Drina Corps Intelligence Section and the Security Organ, reflects the instructions that the Accused had conveyed to Radoslav Janković through Keserović two days prior regarding the transportation of the wounded.[3839] It reports that 22 wounded Bosnian Muslim prisoners were evacuated from the Bratunac Health Centre on 18 July and that the evacuation was organised by the ICRC. The report notes that an MSF convoy that attempted to retrieve its staff from the UN compound in Potočari on 18 July was sent back for procedural reasons as they instead should have entered *via* Zvornik.[3840] At the end of the report, Radoslav Janković requests further instructions with regard to the terms of authorisation for

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3832 *See supra* para. 615.
3833 Ex. P00554a; Richard Butler, T. 16408–16410 (11 July 2011).
3834 Ex. P00554a.
3835 Ex. P00554a.
3836 Ex. P00354a.
3837 Ex. P02489. The report was drafted by Salapura, and issued in the Accused's name. *See also* Richard Butler, T. 16427–16429 (11 July 2011).
3838 Momir Nikolić testified that Radoslav Janković gave the hand-written document to him and he took it to the communications centre where an operations officer named Tomo typed the report, but did not look at the initials "RJ" at the bottom of the page and wrote Nikolić's name and title there because he knew Nikolić personally. Momir Nikolić, T. 12433–12436 (6 April 2011); Ex. P02168. *See also* Richard Butler, T. 16410–16411, 16420–16421 (11 July 2011).
3839 Ex. P02168. *See supra* para. 958.
3840 Ex. P02168.

the evacuation of the MSF workers and the "so-called local staff".[3841] Later that evening Radoslav Janković rang the VRS Main Staff and said that the Accused should be given a paper that he was sending.[3842] Earlier that day, in a telephone-conversation between two unknown individuals regarding the blocking of the MSF convoy one of the interlocutors says that the convoy cannot advance "until they've checked with Tošo 'who they are going to treat there'".[3843] The Chamber concludes that on 18 July the Accused was already participating in decisions on the evacuation of the local staff of international agencies that were still in Srebrenica.

(viii) 19 July 1995

965. During a temporary cease-fire at approximately noon on 19 July 1995, the Accused accompanied Mladić, along with Indić, to a meeting with Smith and others at the Jela Restaurant in Ham-Kram.[3844] It was clear to the participants that Mladić considered the Accused important to the process, even going so far as to refer to the Accused being like his right arm.[3845] During the meeting, the Accused was actively involved, even interrupting the process to suggest changes in the agreement[3846] which dealt with, *inter alia*, ICRC access to the "reception points", the withdrawal of DutchBat from Bratunac, and clearance for UNHCR and humanitarian aid convoys to enter Srebrenica.[3847] After signing the agreement, Mladić left for Žepa,[3848] informing Smith, "I'll go, but General Tolimir will stay here".[3849]

966. At 2:32 p.m. on the same day, Đurđić and the Accused's subordinate, Radoslav Janković, were heard on a radio intercept discussing the release of the MSF personnel from the Srebrenica enclave.[3850] Despite permission from Koljević[3851] for all of the personnel to leave, Đurđić insisted that they stick to "the procedure" and advised Radoslav Janković to release only the women,

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3841 Ex. P02168.
3842 Ex. P00561a (an intercept at 11:26 p.m. on 18 July of a conversation between Radoslav Janković and "Žile" at the Main Staff). Žile says that "Tošo" is "with the unit". Ex. P00561a, p. 2.
3843 Ex. P02488, p. 1 (intercept of 4:17 p.m. on 18 July); Richard Butler, T. 16415–16416 (11 July 2011).
3844 *See supra* para. 616.
3845 David Wood, T. 11092–11093 (10 March 2011). *See supra* n. 2658.
3846 David Wood, T. 11092 (10 March 2011). *See supra* n. 2658.
3847 Ex. P01977, pp. 2–3, 5. In the same meeting, UNPROFOR reiterated requests for access to the 2,000 men who were unaccounted for. Rupert Smith, Ex. P02086, PT. 17528, 17535–17536 (6 November 2007); Rupert Smith, T. 11557 (21 March 2011). *See supra* n. 2660.
3848 Smith, Ex. P02086, PT. 17536 (6 November 2007).
3849 Ex. P02798, Disc 4, 00:01:54–00:01:59, p. 110. *See also* Dušan Janc, T. 14590–14592 (25 May 2011).
3850 Ex. P00383a; Richard Butler, T. 16416–16420, 16422–16426 (11 July 2011). *See also* Dragomir Keserović, T. 14149–14157 (16 May 2011); Ex. P02222 (confidential).
3851 Ex. P00383a, p. 2. Nikola Koljević, as president of the State Committee, was tasked with dealing with issues related to international humanitarian organisations; Colonel Miloš Đurđić was the appointed "coordinator" for the relations between this State Committee and the VRS. *See supra* para. 193.

children, and elderly.[3852] Anticipating the Accused's arrival that evening,[3853] Đurđić instructed Radoslav Janković to consult with the Accused about it further.[3854]

967. That afternoon, the Accused arrived at the OP2 in Bokšanica with Lieutenant Colonel Svetozar Kosorić, Head of the Drina Corps Intelligence Section.[3855] There, along with others, the Accused reviewed maps and plans with Mladić.[3856] At 4:00 p.m., Torlak and Kulovac arrived for a meeting that included the Accused and Mladić, among others.[3857] The group discussed "evacuations" of the Bosnian Muslims of Žepa, which were scheduled to begin the next morning starting with the wounded.[3858] In the same meeting, the Accused and Mladić asserted that the ABiH was holding 400 Bosnian Serb soldiers captive and indicated a willingness to ensure safe conduct for all the men in Žepa "fit for military service" in an all-for-all exchange for these Bosnian Serb POWs.[3859]

(ix) 20 July 1995

968. At 9:49 a.m. on 20 July 1995, Colonel Slobodan Cerović, the Drina Corps Assistant Commander for Morale, Religious, and Legal Affairs, placed an urgent order for a motorised patrol to lead a convoy from Žepa to Kladanj; he noted that the Accused "will be there" and that the motorised patrol should report to the Accused who would determine the convoy's route.[3860]

969. At 11:38 a.m., the Accused reported to an unknown person that UKRCoy would transport the wounded Bosnian Muslim soldiers from Žepa to Sarajevo; he also stated that Indić should be notified to allow UKRCoy to replenish supplies and fuel to undertake this task.[3861] The Accused said that the activities with the wounded were continuing, but that "the rest of it has not started yet".[3862]

3852 Ex. P00383a, pp. 2–3.
3853 It is unclear whether they were discussing the Accused's arrival at the Main Staff Headquarters or in Bratunac. Richard Butler, T. 16425–16426 (11 July 2011).
3854 Ex. P00383a, p. 3 (referring to the Accused as "Tošo"); Richard Butler, T. 16425–16426 (11 July 2011).
3855 Ex. P02798, Disc 4, 00:19:57–00:20:30, p. 116; Ex. P02799, pp. 153–154. *See supra* para. 127. The Accused is wearing a camouflage uniform with vest and a peaked military hat; he was identified by Torlak at points 00:21:29 and 00:25:26 in the same video. Hamdija Torlak, T. 4362–4363 (24 August 2010).
3856 Ex. P02798, Disc 4, 00:21:06–00:21:47, p. 117; Ex. P02799, p. 155.
3857 Ex. P02798, Disc 4, 00:23:39–00:24:37, p. 118; Ex. P02799, p. 156. *See also* Ex. D00058, p. 1. *See supra* para. 617.
3858 *See supra* para. 617.
3859 Ex. D00058, p. 2. *See supra* paras. 617–618.
3860 Ex. P00401a.
3861 Ex. P02815. The same intercept records the Accused as noting the need to allow such re-supply "because they have nothing". *Ibid.*
3862 Ex. P02815.

970. Consistent with the Accused's prior order of a loudspeaker van,[3863] throughout the day, loudspeakers were used to call on the Žepa population to surrender.[3864] While members of the VRS Main Staff were gathered at the Jela restaurant to celebrate Živanović's farewell that day, Milovanović did not recall the Accused being present;[3865] he was told at about this time that the Accused was at the "Forward Command Post 2".[3866]

971. On the same day, negotiations continued at the Sarajevo Airport with regard to an all-for-all prisoner exchange which included the release of all ABiH soldiers detained in Bosnian Serb prisons and camps including some new captives from Srebrenica and "the evacuation of everyone from Žepa who wishes to go".[3867] At 5:49 p.m., an intercept records the Accused as telling an unknown person "[t]he Turks don't want to negotiate".[3868] When asked if they are doing anything, the Accused responded, "[y]es, we are".[3869] At some point in the same day, UNPROFOR's Civil Affairs team of Bezruchenko and Joseph met with the Accused and Mladić in Žepa; at that time, the Accused told the Civil Affairs team that the VRS would accept an arrangement in which the Bosnian Muslim population could remain in Žepa, but only if they disarm.[3870]

972. After 9:30 p.m. that evening, two intercepted conversations record the Accused and Miletić discussing a French Lieutenant Colonel and a Ukrainian Deputy who were coming back from Sarajevo to talk to Palić; the Accused relayed that he would figure out how to deal with them.[3871]

(x) 21 July 1995

973. In the early morning hours of 21 July 1995, a report type-signed by the Accused entitled "Situation in Žepa" was sent to Miletić in the VRS Main Staff.[3872] In it, the Accused proposed the use of chemical agents or aerosol grenades and bombs to accelerate the fall of Žepa and "the surrender of Muslims"; the Accused outlined that the surrender would come sooner "if we destroyed groups of Muslim refugees fleeing from the direction of Stublić, Radava and Brloška Planina".[3873] The very same day, an order for these types of weapons was issued to the 27th

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3863 The Accused had ordered a loudspeaker van on 15 July 1995. *See supra* para. 956.
3864 *See supra* para. 621.
3865 Manojlo Milovanović, T. 14283–14285 (18 May 2011).
3866 Manojlo Milovanović, T. 14285 (18 May 2011). Given the Accused's routine presence at OP2 in Bokšanica in late July 1995, the Chamber considers that "Forward Command Post 2" refers to this same place.
3867 *See supra* para. 623.
3868 Ex. P00371a.
3869 Ex. P00371a.
3870 Ex. P01960, p. 2. *See also* Edward Joseph, Ex. P01949, PT. 14243–14244 (23 August 2007); Ex. P00384a, p. 2 (indicating that a group from UNPROFOR had been granted permission to enter Žepa on the 20th and had returned to Sarajevo that evening).
3871 Ex. P02657 (recording two conversations, one at 9:37 p.m. and another at 9:44 p.m.). *See also supra* para. 84.
3872 Ex. P00488. *See supra* para. 626. A handwritten note at the bottom of the document references "0150 hrs". Ex. P00488, p. 2.
3873 Ex. P00488. *See supra* para. 626.

Logistics Base, the Drina Corps, and the 65th Protection Regiment to facilitate procurement and delivery of such weapons to Krstić at the Drina Corps IKM.[3874]

974. The Accused argues that the destruction of "groups of Muslim refugees" mentioned in this document, Exhibit P00488, pertains to the destruction of "those features that might be used for—as hiding places for the population"; he bases this on testimony of Trivić about the use of the word "zbjeg" in BCS, which is intended to refer to a place of refuge, not "refugees".[3875] The Chamber finds that, regardless of whether this term is a reference to Muslim refugees or places of refuge, the finding that needs to be made is whether the group that was envisioned for destruction included civilians. The Chamber shall make this finding in the section relating to the Accused's contribution to the JCE to Forcibly Remove.[3876]

975. Around 10:30 a.m. on 21 July, Bezruchenko and a UN team arrived at the checkpoint and were denied access to continue negotiations as the Accused had instructed Captain Milovan Lelek[3877] not to allow anyone through.[3878] At that time, the Accused was unreachable as "out in the field".[3879] At some point later that day, the Accused met with Bezruchenko and Joseph and expressed some interest in a "radical" demilitarisation plan.[3880]

(xi) 22–23 July 1995

976. On 22 July 1995, at 9:31 a.m., Popović contacted the Accused and, after a brief discussion, Popović asked the Accused for information about his missing cousin; unable to provide him any positive information, the Accused told him "[y]ou just do your job".[3881] The next day, on 23 July, Popović supervised the 10th Sabotage Detachment in killing at least 39 Bosnian Muslim men in Bišina and organised their burial.[3882]

3874 Ex. P02155. *See supra* para. 627.

3875 Accused Closing Argument, T. 19526 (22 August 2012); Mirko Trivić, T. 8624–8625 (9 December 2010).

3876 *See infra* paras. 1090–1091.

3877 Lelek was the Chief of Staff of the Rogatica Brigade. *See* Đoko Razdoljac, T. 8228–8229 (30 November 2010).

3878 Ex. P00384a, p. 1. The intercept records Đurđić as instructing Lelek to "do as you were told". *Ibid.*

3879 Ex. P00384a, p. 1.

3880 *See supra* n. 2698. Joseph testified that it was his understanding that the actual "radical demilitarisation" plan was not presented to either side at the level of Izetbegović or his counterparts on the Bosnian Serb side such as Karadžić and Mladić. Edward Joseph, T. 10747 (3 March 2011).

3881 Ex. P00765. Alternate English translations record this phrase as "[f]ocus on your work" (Ex. P00773a) and "[w]ork away" (Ex. P00369a).

3882 *See supra* paras. 542–546. Intercepts throughout 23 July 1995 track the Accused's movements to meet others from the Main Staff. *See, e.g.*, Ex. P00723a; Ex. P00578a; Ex. P00300 (confidential). At 7:30 p.m., both the Accused and Mladić were unreachable. Ex. P00321 (confidential).

(xii) 24 July 1995

977. In the afternoon of 24 July 1995, the Accused attended a meeting in Bokšanica in which Mladić demanded that an agreement be signed by the Bosnian Muslim representatives and the evacuation of the civilian population begin.[3883] After the conclusion of the meeting, Mladić informed Torlak that the evacuation of the civilians would be carried out by the Accused and Palić and that Torlak would be in Bokšanica as a guarantee for the Accused's safety, as the centre of Žepa was not yet under VRS control.[3884]

978. The Accused then left to organise the transportation of the Bosnian Muslims from Žepa.[3885] A 7:54 p.m. intercept affirms the Accused's role in organising the transports when Mladić instructs that the Accused should not to go to Goražde to deal with convoys, but rather to stay where he is as he is "completely taking over from me in the command there".[3886]

(xiii) 25 July 1995

979. Early the following morning, around 5:30 a.m. on 25 July 1995, the Accused issued a document to "Gvero or Miletić" informing them of the agreement signed the day prior and requesting follow-up.[3887] In particular, the Accused instructed that "[o]ur commission should demand all our war prisoners including ones from Goražde and Bihać [...] be released between 25 and 28 July 1995".[3888] Further, the Accused requested:

> Advise State Commission for War Prisoners and SRK [Sarajevo-Romanija Corps] Commission not to agree to longer procedure considering that Muslims could take advantage of the signed agreement [of 24 July] under the pressure from Sarajevo, which they have already tried to do so by bringing up the issue of prisoners from Srebrenica.[3889]

980. Throughout that morning, the Accused made a series of contacts to coordinate the Žepa transports.[3890] Around 10:30 a.m., Major Milorad Bukva, Chief of the Intelligence Department of

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3883 *See supra* paras. 629–633. Ex. P02798, Disc 4, 00:35:48-00:36:39; Ex. P02799, p. 158; Dušan Janc, T. 14607–14608 (25 May 2011), T. 14658 (26 May 2011).

3884 *See supra* para. 632.

3885 *See supra* para. 632.

3886 Ex. P00359a. *See also* Ex. P02807, 00:25:20–00:25:50, p. 3 (Mladić recounting how he told the Accused "Tošo, get ready, you are going to Žepa to organise transport. The buses are coming." Mladić said he then ordered the buses and "General Tolimir left and organized the Turks".) While the intercept does not identify the person who gives this instruction to the Accused, taken together with the video-footage in which Mladić recounts such an order to the Accused, as well as the context of the events on the ground at the time, the Chamber is satisfied that the only reasonable inference is that this speaker is Mladić.

3887 Ex. P00494. *See supra* para. 634.

3888 Ex. P00494, p. 1.

3889 Ex. P00494, p. 1. *See supra* para. 634.

3890 *See, e.g.*, Ex. P00367a (an 8:10 a.m. intercept recording the Accused as stating "they are already sending the first wounded" and "they will send them all the way up to Sarajevo" and instructing that all checkpoints should be warned that they should allow this); Ex. P00368a (an 8:22 a.m. intercept in which the Accused is ensuring that the Main Staff get copies of the Žepa agreements); Ex. P02855 (an 8:54 a.m. intercept recording the Accused as

the Sarajevo-Romanija Corps,[3891] contacted the Accused and relayed that Bezruchenko was at the checkpoint stating that he was the one to assess when the transportation actions should commence.[3892] The Accused agreed, but would not authorise Bezruchenko's passage into the town until verbal permission was given over the phone.[3893]

981. The Accused eventually met the delegation in Žepa—which included, *inter alia*, Bezruchenko, Joseph, Dibb, two additional JCOs, and ICRC personnel,[3894] where the Accused authorised arrangements to move the sick and wounded in UKRCoy APCs.[3895] When the transports began, the Accused went to the UNPROFOR base in the centre of Žepa escorted by officers or privates.[3896] Palić, who was already present with Torlak and other members of the Žepa War Presidency, immediately got in touch with the Accused.[3897]

982. During the transportation, the Accused was directing what appeared to be seven to nine members of the Bosnian Serb Forces to load the women and children onto the buses.[3898] While the Accused did not overtly threaten the inhabitants of Žepa,[3899] he did carry a pistol and at one point had it raised at shoulder height and pointing to the sky.[3900] David Wood, an UNPROFOR Officer who was present described the atmosphere as "very threatening" and he testified that "the [Bosnian Muslims] were clearly very frightened and [distressed], and it was being directed [...] by General

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reporting that everyone is there to start "evacuations", but they are waiting on UNPROFOR); Ex. P00370a (a 9:15 a.m. intercept in which the Accused indicates that a certain Matić is with him and asks for Kosorić and Golić); Ex. P00417a (a 9:45 a.m. intercept in which Popovic tells the Accused that he sent "Kotorić" to him as well; Popović again asks about his cousin); Ex. P00418a (a 10:10 a.m. intercept in which the Accused arranges for the VRS translator to be where Smith is, directs to inform "Papić" that there will be an "evacuation" of the wounded from Žepa towards Sarajevo and that Matić and the UN will be leading the column, and advises that there is no need for controls at the checkpoints "since we are doing that here"). As a part of this coordination, the Accused ensured that the buses would have enough fuel. Ex. P00568a. *See also* Ex. P00478. *See supra* para. 640.

3891 Ex. P00758, p. 1.

3892 Ex. P00419a.

3893 Ex. P00419a.

3894 Thomas Dibb, T. 4870 (2 September 2010), T. 4906-4907 (6 September 2010); Thomas Dibb, Ex. P00741, PT. 16276–16279 (15 October 2007).

3895 Thomas Dibb, Ex. P00741, PT. 16283 (15 October 2007).

3896 Hamdija Torlak, T. 4376 (24 August 2010), T. 4391–4392 (25 August 2010), T. 4766 (1 September 2010). *See supra* para. 641. Torlak identified who he believed to be the Accused's escorts on a video from the start of the transports. Ex. P02798, Disc 4, 00:37:10; Hamdija Torlak, T. 4418 (25 August 2010).

3897 Hamdija Torlak, T. 4392 (25 August 2010), T. 4420–4421 (25 August 2010); Ex. P02798, Disc 4, 00:38:11-00:38:18 (video-footage showing the Accused shaking hands with Palić); Ex. P02799, p. 163. *See supra* para. 641.

3898 *See supra* para. 643, n. 2760. While loading the buses, the Accused was wearing green camouflage clothing, a green vest, and a peaked Serb officer's cap. David Wood, T. 11105–11106 (10 March 2011); Ex. P02798, Disc 4, 00:38:15. In his closing arguments, the Accused agreed that he was "in the centre of Žepa escorting the convoy together with [...] Palić." Accused Closing Argument, T. 19524 (22 August 2012).

3899 David Wood, T. 11104–11105, 11128 (10 March 2011). *See also* Ex. D00055, p. 29.

3900 David Wood, T. 11104 (10 March 2011). *See supra* para. 643. Wood categorised such action as not normal conduct for a general. David Wood, T. 11126 (10 March 2011). *See supra* n. 2761. Wood also recalled that, in April 1995, the Accused showed him a leather pouch in which he carried a grenade; Wood testified that the Accused appeared to be wearing this same pouch in a video taken at Bokšanica on 19 July. David Wood, T. 11090–11091, 11107, 11172–11173 (10 March 2011); Ex. P02798, Disc 4, 00:20:28.

Tolimir".[3901] During the transportation process the Accused was, next to Mladić, the most senior VRS officer present.[3902]

983. Amidst the transport activities, throughout the day the Accused personally received intelligence reports of information taken from POWs relating to the ABiH's communications systems[3903] and updates regarding negotiations at the Sarajevo Airport on exchanges of Bosnian Serb POWs for the able-bodied men of Žepa.[3904]

984. Around 4:00 p.m., the Accused was at Bokšanica, where Mladić and Smith had reconvened their earlier meeting; there is, however, no account of him participating in the meeting that was ongoing at that time and he returned to Žepa town on the same afternoon.[3905]

985. That evening, the Accused, accompanied by Palić, personally escorted the last convoy out of Žepa in his vehicle.[3906] After the Bosnian Muslim civilians had been transported to the confrontation line, Mičić drove the Accused back to OP2 at Bokšanica.[3907] At 11:17 p.m., Malinić[3908] who was present with the Accused, is recorded as telling Golić that the "first package went off safely [...] to the capital city" and "now we have something big on the way".[3909]

(xiv) 26–27 July 1995

986. In the early morning of 26 July 1995, the Accused sent a message through the Zvornik Brigade Command for two officers to contact him personally,[3910] while he remained in Žepa that day directing transport operations with Pećanac.[3911] Throughout 26–27 July, the Accused continued

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3901 David Wood, T. 11104 (10 March 2011).
3902 *See supra* para. 641.
3903 Ex. P00485.
3904 Ex. P00493.
3905 David Wood, T. 11100–11101 (10 March 2011); Emma Sayer, T. 10975, 10980 (8 March 2011); Ex. P01979, p. 2. Ex. P01979 refers to events on 25 July. Emma Sayer, T. 10972–10974 (8 March 2011), T. 11015 (9 March 2011). *See supra* para. 650.
3906 *See supra* para. 646.
3907 Mile Mičić, T. 16009 (4 July 2011). *See also* Ex. D00296, pp. 31–32. According to Mičić, they usually departed in the evening around 8:00 p.m. and returned to the check-point in the early morning. Ex. D00296, p. 32.
3908 "Zoka" refers to Major Zoran Malinić, MP Battalion Commander of the 65th Protection Regiment. Stefanie Frease, T. 5050, 5053, 5055–5056 (7 September 2010). *See also* Tomasz Blaszcsyk, T. 3735 (8 July 2010); Ex. P00758, p. 4. *See supra* para. 114.
3909 Ex. P00733a. *See infra* para. 1059.
3910 Ex. P00569a.
3911 Edward Joseph, Ex. P01949, PT. 14189 (23 August 2007); Ex. D00175, p. 2. *See also* Meho Džebo, T. 14801–14802 (30 May 2011); Hamdija Torlak, T. 4421 (25 August 2010); Ex. D00055, p. 29.

to receive intelligence reports, including information on the plans concerning the ABiH in Žepa.[3912] He also received and responded to requests from the VRS Main Staff.[3913]

987. On the morning of 27 July 1995, the final day of the transport of the civilian population out of Žepa, Dibb saw the Accused sitting near the log cabins in Žepa with a bottle of alcohol and described him as "slightly under the influence of alcohol".[3914] At that time, Dibb again broached the subject of allowing the group of lightly wounded men to leave and the Accused agreed.[3915] When the last convoy departed that day, these 12 lightly wounded men were allowed to board the last buses.[3916]

988. The Accused had ensured enough vehicles to move the final 400 Bosnian Muslims from Žepa[3917] and everyone was loaded by 1:00 p.m.[3918] When the last convoy reached Bokšanica, the Accused personally removed Mehmed Hajrić, a local hodža, stating that "he is a man of military age".[3919]

989. The remaining passengers travelled from from Bokšanica to Rogatica until the bus stopped somewhere in Luke near Tišća.[3920] There, a VRS officer boarded and asked whether there were any wounded.[3921] When answered in the affirmative,[3922] the officer got off the bus and took an A4-sized paper from the Accused who was standing outside of the bus.[3923] The officer then proceeded to do a roll-call of the lightly wounded and, when finished, ordered these 12 men off the bus.[3924] The men, along with 28 elderly people, were taken to a different bus and driven to Rasadnik Prison.[3925]

3912 Ex. P00483. *See supra* para. 657. *See also* Ex. D00522; Ex. P00484; Ex. D00055, p. 29. On 27 July 1995, it was Joseph's impression that the Accused was aware that the prisoner exchange negotiations were proceeding at the Sarajevo Airport. Edward Joseph, T. 10559–10560 (28 February 2011). *See also* Ex. P02108, p. 62.

3913 Ex. P00476; Ex. P00477.

3914 Thomas Dibb, Ex. P00741, PT. 16291 (15 October 2007).

3915 Thomas Dibb, Ex. P00741, PT. 16291 (15 October 2007). Joseph made a similar request to the Accused later on the same day and he also gave his agreement. Edward Joseph, T. 10614 (1 March 2011); Edward Joseph, Ex. P01949, PT. 14192 (23 August 2007). *See supra* para. 653.

3916 *See supra* para. 653.

3917 Thomas Dibb, T. 4916–4917 (6 September 2010).

3918 Thomas Dibb, T. 4941–4942 (6 September 2010).

3919 Thomas Dibb, Ex. P00741, PT. 16291, 16297 (15 October 2007). *See also* Thomas Dibb, T. 4912–4915 (6 September 2010). *See supra* n. 2849.

3920 PW-006, Ex. P02797, PT. 7023–7024 (7 February 2007); Meho Džebo, T. 14811 (30 May 2011). *See supra* para. 659.

3921 Meho Džebo, T. 14812 (30 May 2011).

3922 Meho Džebo, T. 14812 (30 May 2011).

3923 *See supra* para. 659.

3924 *See supra* para. 659.

3925 *See supra* para. 659.

(xv) 28 July 1995

990. On 28 July 1995, the Accused issued an intelligence report to all organs of the VRS Main Staff, recounting the overall situation in BiH and drawing from multiple intelligence sources.[3926] The Accused sent further intelligence reports throughout the day,[3927] most notably, reports relaying intelligence information received from "conversations with Palić".[3928]

991. When the 12 lightly wounded and 28 elderly arrived in Rasadnik Prison that day, the Accused appeared—along with an escort and Milan "Zvijerica" Mijatović—and ordered the prisoners to be led into the building that was being used as a detention centre.[3929] There, the Accused addressed these men, stating that their evacuation from Žepa had been contingent on the release of 48 Bosnian Serb soldiers from the Dubrava airport near Tuzla.[3930] The Accused informed them that the Bosnian Muslim side had not honoured this agreement and, therefore, the Bosnian Serb side was forced to keep them as prisoners.[3931] The Accused advised the prisoners not to worry and said that this situation would last only two or three days and then it would be resolved.[3932] After that the Accused ordered that the wounded should be separated from the elderly[3933] and that, once the search was completed, a list of all the items that had been taken away should be made and that all the belongings should be returned to each person on the day when he would be released or exchanged.[3934] The Accused then left having spent only this short time there and was not seen at Rasadnik Prison again.[3935]

992. At 5:20 p.m. on 28 July, a meeting was held at OP2 in Bokšanica.[3936] There, Gobilliard and Fortin confronted the Accused—whom Fortin described as "not entirely sober"[3937]—about the

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3926 Ex. D00262. Some of the information appears to be taken from a report issued by a Jovica Karanović the day prior. Ex. D00522.
3927 Ex. P00482 (the Accused informing Krstić about the Zepa communications centre).
3928 Ex. P00150; Ex. P00151.
3929 Meho Džebo, T. 14813–14814 (30 May 2011), T. 14855 (31 May 2011). *See also supra* n. 2867.
3930 Meho Džebo, T. 14813 (30 May 2011), T. 14881–14882 (31 May 2011).
3931 Meho Džebo, T. 14813 (30 May 2011).
3932 Meho Džebo, T. 14813–14814 (30 May 2011).
3933 Meho Džebo, T. 14814 (30 May 2011).
3934 Meho Džebo, T. 14814 (30 May 2011). *See supra* para. 663. All the men who were taken from the last bus were registered with the ICRC and all except Esad Cocalić were exchanged in January 1996 at the Sarajevo Airport. Hamdija Torlak, T. 4799–4800, 4803–4804 (2 September 2010). *See also* Meho Džebo, T. 14817–14818, 14842 (30 May 2011). *See supra* para. 664. Cocalić was taken away from the prison; while the guards told Džebo that Cocalić had been exchanged, he was not seen again thereafter. Meho Džebo, T. 14817 (30 May 2011), T. 14842 (31 May 2011). *See also* Hamdija Torlak, T. 4790 (1 September 2010), T. 4799, 4803–4804 (2 September 2010).
3935 *See supra* para. 663, n. 2870.
3936 Ex. P00582, p. 1; Louis Fortin, T. 3080–3081 (23 June 2010); Louis Fortin, Ex. P00587, PT. 18288–18289 (27 November 2007), PT. 18401 (28 November 2007). *See supra* paras. 660–661.
3937 Louis Fortin, Ex. P00587, PT. 18290 (27 November 2007) (further testifying that Gobilliard recalled this as a "usual state" for him.).

Bosnian Muslim men who were taken off the last two convoys on the previous evening.[3938] The Accused confirmed that these men were taken to Rasadnik Prison, stating they were, in fact, males of military age and that they had lied about their age to try to escape from Žepa.[3939] The Accused told them that the prisoners would be registered by the ICRC as POWs and await an exchange agreement.[3940] In the same meeting, UNPROFOR refused the Accused's offer to allow them to send vehicles to the hills to gather Bosnian Muslim civilians and military personnel.[3941] The Accused thereafter advised UNPROFOR to withdraw from the area "since UNPROFOR had accomplished its task of evacuating the civilians, and since it was not willing to help with the Bosnian military".[3942]

993. At the same meeting, the Accused denied "rumours" that Palić was dead,[3943] saying that it was possibly propaganda of the sort that every army uses to affect the morale of its enemy.[3944]

994. Once the main military operation was completed in Žepa, Mladić and the Accused went on to deal with an attack on the other side of the RS; Smith testified that they left Gvero behind to "deal with the rest".[3945]

(xvi) 29 July 1995

995. At 9:30 a.m. on 29 July 1995, Pećanac issued a "very urgent" report to the Accused, and others, recounting a meeting held earlier that morning with UNPROFOR; in the meeting, Pećanac had relayed "assurances from Hajrić and Imamović that there were no more civilians in the former enclave of Žepa".[3946] By way of Pećanac's report, the Accused also received an update on the remaining international peacekeeping forces in Žepa and unconfirmed information that the elements of the ABiH from Žepa were trying to break through on the right bank of the Drina River "probably with intention to surrender to the forces of the Serbian MUP".[3947]

3938 Louis Fortin, Ex. P00587, PT. 18289 (27 November 2007); Ex. P00582, p. 1. They also inquired about one other Bosnian Muslim civilian who had been taken from a checkpoint on the afternoon of 28 July 1995. Ex. P00582, p. 1.

3939 Ex. P00582, p. 2. *See supra* para. 660

3940 Ex. P00582, p. 2. *See supra* n. 2858

3941 Ex. P00582, p. 3. *See supra* para. 661.

3942 Louis Fortin, Ex. P00587, PT. 18294 (27 November 2007); Ex. P00582, p. 4.

3943 Louis Fortin, Ex. P00587, PT. 18294–18295 (27 November 2007); Ex. P00582, p. 5. *See also* Esma Palić, T. 13326 (27 April 2011).

3944 Ex. P00582, p. 5. *See supra* para. 666. Earlier the same day, Mladić had told Joseph that Palić was dead. *Ibid.*

3945 Rupert Smith, Ex. P02086, PT. 17581–17582 (6 November 2007). *See also* Rupert Smith, Ex. P02086, PT. 17556–17557 (6 November 2007), PT. 17731 (8 November 2007), PT. 17827 (9 November 2007).

3946 Ex. P00486, pp. 1–2. *See supra* para. 672.

3947 Ex. P00486, p. 2. *See supra* para. 672.

996. In line with previous discussions related to the POWs, an UNPROFOR report of the same day notes that the Accused had told Gobilliard that "UNPROFOR could evacuate the men of Žepa directly if the Bosnians would accept an all-for-all prisoner exchange".[3948]

997. The same day, the Accused sent a "very urgent" communication regarding the capture and disarmament of the ABiH Žepa Brigade.[3949] The document was addressed to the Drina Corps IKM, the Drina Corps Intelligence Section and its Security Organ, the Command of the Rogatica Brigade, the Eastern Bosnian Corps, the 1st Krajina Corps, and personally to Krstić, Pećanac, and Kušić[3950] and stated that combat operations should continue against the ABiH Žepa Brigade until the Bosnian Muslims had carried out the agreed exchange and implemented the 24 July 1995 Agreement.[3951] The Accused's communication included the following direction:

> Continue combat operations in order to surround and destroy the 1st Žepa Brigade until the Muslims make the exchange and carry out the agreement from [...] 24 July related to their disarmament and surrender. Take all necessary measures to prevent them from leaving the encirclement. Do not register persons you capture before cessation of fire and do not report them to international organisations. We are going to keep them for exchange in case the Muslim[s] do not carry out the agreement or they manage to break through from the encirclement[3952]

998. The Accused stated that they anticipated a cease-fire and POW exchange the following day.[3953]

(xvii) 30–31 July 1995

999. On 30 July 1995, Čarkić issued a document, on the authorisation of the Accused,[3954] that included a list of the names of the Bosnian Muslim men who had been accorded POW status after

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[3948] Ex. P02131, p. 3; Ex. P02108, p. 72. *See also* Edward Joseph, T. 10562–10565 (28 February 2011) (Joseph remained concerned about the ultimate safety of the Bosnian Muslim men). *See supra* para. 670. Harland assessed the Accused's position as consistent with that of Minister Muratović, but that "[f]or some reason, the Serb negotiators at the airport take a much harder position than [the Accused]". Ex. P02131, p. 3; Ex. P02108, p. 72.

[3949] Ex. P00122; Ex. P00152.

[3950] Ex. P00122, p. 1; Ex. P00152.

[3951] *See supra* para. 671.

[3952] Ex. P00122, p. 2. *See also* Ex. P00152. Obradović characterised the document as more of an information than an order. Ljubomir Obradović, T. 12065–12067 (30 March 2011). *See also* Dragomir Pećanac, T. 18171–18172 (private session) (16 January 2012). Butler testified that he was not aware of any military reasons or reason based on the documents and materials in this case that would justify this direction not to register persons captured; he also testified that if POWs are going to be exchanged they need to be registered at a minimum with international organisations. Richard Butler, T. 16430–16431 (11 July 2011). An ABiH MUP message several days later relays a recorded intercept of 3 August 1995, in which a VRS officer is recorded as saying that the Accused ordered: "Do not register the detainees. Talk to them as much as possible and keep them for the future exchanges." Ex. P02875, p. 1.

[3953] Ex. P00122, pp. 2–3.

[3954] Čarkić confirmed that when he signed the document he wrote "by authorisation from General Tolimir" in order to emphasise the report was on the Accused's orders. Zoran Čarkić, T. 12835–12836 (14 April 2011); Ex. P01434, p. 6.

28 July and who were being held at Rasadnik Prison.[3955] The list includes, among others, Torlak, Meho Džebo, Hajrić, Imamović, and "Atlantida" (Palić).[3956] The document also lists "orders and instructions of General Tolimir" and records that "all the necessary measures are taken and in accordance to the possibility they are mainly being carried out".[3957] These measures ordered by the Accused specifically called for, *inter alia*, categorisation of the prisoners, three meals a day, medical care, and opportunity for prayer.[3958] The document also records the Accused's demand for an investigation into the prisoner's complaints of theft that occurred when they were taken prisoner.[3959]

1000. While the ICRC did visit Rasadnik Prison thereafter and registered the prisoners there,[3960] there is no evidence that Palić was registered as a POW. Čarkić testified that he believed Beara knew Palić was not registered by the ICRC and, in view of the line of subordination, that the Accused knew this as well.[3961]

1001. At some point in the day on 30 July, the Accused left the area to attend to a situation at the Grahovo-Glamoč front in south-western BiH.[3962]

(c) August 1995 and Afterwards

1002. In August and the months that followed, the Accused continued to be involved in RS political discussions and international negotiations at locations throughout the BiH and abroad.[3963]

3955 Ex. P01434. Ex. P01434 refers to the POWs as being held in a holding centre in Rogatica, Čarkić specified that they were at Radasnik Prison. Zoran Čarkić, T. 12755 (private session) (13 April 2011), T. 12838 (14 April 2011). *See also supra* n. 2867.

3956 Ex. P01434, pp. 1–4; Meho Džebo, T. 14823–14825 (31 May 2011). "Atlantida" was the code-name given to Avdo Palić. *See supra* para. 677, n. 2917. The document also records that "Atlantida" was held at another location and is a "picture of health". *Ibid.*

3957 Ex. P01434, p. 5.

3958 Ex. P01434, p. 5. Čarkić testified that the Accused ordered the most humane measures be applied to the POWs. Zoran Čarkić, T. 12836, 12890 (private session) (14 April 2011). While these orders were met on a very basic level, the prisoners were also maltreated and beaten by policemen. Meho Džebo, T. 14823–14832 (31 May 2011). *See supra* para. 664.

3959 Ex. P01434, pp. 5–6. *See supra* n. 2852. A document issued to the 65th Protection Regiment by Beara on 24 August 1995 shows follow-up investigation of Matić's involvement in this incident. Ex. P02427; Milomir Savčić, T. 15861–15864 (22 June 2011). Savčić believes that Matić was later expelled from the MP Battalion. Milomir Savčić, T. 15860 (22 June 2011).

3960 Meho Džebo, T. 14829–14830, 14840–14841 (31 May 2011); Ex. D00211; Ex. P02253. *See supra* n. 2870.

3961 Zoran Čarkić, T. 12762 (private session) (13 April 2011).

3962 Ex. P02457 (an intercept of 7:50 p.m. of 30 July 1995 records that the Accused and Đukić "went to the Grahovo-Glamoč front today." Lieutenant Colonel General Đorđe Đukić was the Head of the VRS Main Staff Sector for Logistics, see *supra* para. 83. *See also* Ex. P02458, p. 3; Ex. P01246, pp. 1–2. A memo by Harland on the following day, 31 July 1995, records Smith as stating that the entire Bosnian Serb high command—including Mladić, Gvero, Milovanović, and the Accused—had moved from the "Srebrenica/Žepa area" to Banja Luka. Ex. P02100, pp. 2–3; Ex. P02108, pp. 75–77; Rupert Smith, T. 11566 (21 March 2011); Rupert Smith, Ex. P02086, PT. 17563 (6 November 2007). *See also* Dragomir Pećanac, T. 18112 (16 January 2012). The Chamber does not have evidence to identify exactly how long the Accused remained in western BiH or the continuity of his presence there.

1003. At the same time, the Accused continued receiving updates from the field;[3964] specifically, on 14 August 1995, the Accused personally received a report from Beara regarding prisoners from the Žepa enclave.[3965] This document informed the Accused that the Security Administration had made proposals to the RS Ministry of Justice, the RS MUP, the RS RDB, and various Corps of the VRS, for follow-up measures to ensure extradition of the Bosnian Muslim men from Žepa who had fled to Serbia.[3966] The report also proposed actions to be taken for all prisoners from Žepa, which was estimated at "about 70 persons".[3967] A report from Novica Simić, dated 31 August 1995, notes that the Accused had made a promise to families of captured Bosnian Serb soldiers that they would be exchanged as soon as the Eastern Bosnia Corps was able to capture enough enemy soldiers for exchange.[3968]

1004. On 3 September 1995, the Accused issued a report on the exchange of prisoners to the commanders and intelligence and security departments of the corps.[3969] In this update, the Accused relayed the concerns of the families of the captured Bosnian Serb soldiers and their call for exchanges; he also noted that the VRS Main Staff had insisted on an "all-for-all" instead of a "one-for-one" approach during prisoner-exchange negotiations, but that the Bosnian Muslim side was blocking the exchange by making it conditional that a larger number of Bosnian Muslims from the area of Srebrenica and Žepa be exchanged than the number the VRS had in the RS prisons.[3970]

1005. By subsequent letter of 6 October 1995, the Accused informed the VRS Main Staff of a cease-fire agreement to be implemented on 10 October 1995 that made specific provision for immediate facilitation of humane treatment of all civilians and POWs and exchange of all POWs supervised by UNPROFOR.[3971] On 15 December 1995, the Accused issued a request for

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[3963] *See, e.g.,* Ex. P02105, pp. 11, 35–45, 95–100, 108–110; Ex. P02102; Ex. P02156; Ex. D00532; Ex. P02466; Ex. P02467; Ex. P02468; Ex. D00223, p. 2; Ex. D00224; Ex. D00219; Ex. P01396, pp. 1, 9; Ex. P02435; Ex. P00585, p. 265; Rupert Smith, Ex. P02086, PT. 17568–17570 (6 November 2007). *See also* Ex. P01427, pp. 7, 31, 43, 79.

[3964] Even while at the Dayton Agreement negotiations in Dayton, Ohio, U.S.A., intercepts record the Accused as being in regular contact with Mladić and RS political figures. *See, e.g.,* Ex. P02463; Ex. P02464; Ex. P02465; Ex. P02466.

[3965] Ex. P02256.

[3966] Ex. P02256, pp. 1–2.

[3967] Ex. P02256, pp. 3–5. The proposals called for transfer of all prisoners from the Žepa enclave to be escorted to "Srbinje KPD" where they would be held in isolation with contact only by members of a designated investigations team; access of the State Commission for Prisoner Exchange, ICRC, UNHCR, and other humanitarian organisations would come only after investigations were completed. *Ibid.*

[3968] Ex. P02751.

[3969] Ex. P02250.

[3970] Ex. P02250, p. 2; Richard Butler, T. 16434–16437 (11 July 2011). *See supra* n. 2461.

[3971] Ex. D00263, p. 3. *See also* Manojlo Milovanović, T. 14400–14402, 14407 (19 May 2011).

information to, *inter alia*, the Corps, Đurđić, and the VRS Main Staff calling for information, opinion, and suggestions about a proposed prisoner exchange with the ABiH.[3972]

1006. The Chamber also heard evidence that long after the conflict the Accused gave advice as to what information should be released to the public regarding the events in the aftermath of the fall of Srebrenica. In particular, on 27 February 1997, the Accused proposed, based on a request from the Dutch Embassy in Sarajevo, that no written response be made to help identify 239 persons who had been listed as being at the UN compound on 13 July.[3973] He added that no response should be made to "any other international organisations or institutions which might try to obtain something in writing".[3974]

C. JCE to Forcibly Remove the Population from Srebrenica and Žepa

1. Submissions of the Parties

1007. The Indictment charges the Accused with participation in a JCE, the common purpose of which was "to force the Muslim population out of the Srebrenica and Žepa enclaves from about 8 March 1995 through the end of August 1995" ("JCE to Forcibly Remove").[3975] Members of this JCE, according to the Indictment, include but are not limited to: Radovan Karadzić, Ratko Mladić, the Accused, Milenko Živanović, Radislav Krstić, Ljubomir Borovčanin, Petar Salapura, Ljubiša Beara, Radoslav Janković, Dragomir Pećanac, Vujadin Popović, and Momir Nikolić.[3976] The Prosecution asserts that the members of the JCE "were experts at using all means available—including military force, humanitarian pressure, propaganda, terror and forced negotiations—to achieve their criminal goals."[3977]

1008. The Accused put forward several general arguments in the context of the alleged JCE to Forcibly Remove. One set of arguments relates to the free choice of the Bosnian Muslim population

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3972 Ex. P02251. The request also deals with a proposed prisoner exchange with the Croatian Defence Council (HVO). *Ibid.*

3973 Ex. P02433, pp. 1–3.

3974 Ex. P02433, p. 3.

3975 Indictment, para. 35. The underlying acts for the JCE are set out in paragraphs 36–46 (general underlying acts in support of the JCE to Forcibly Remove the Bosnian Muslim populations from Srebrenica and Žepa); paragraphs 47–50 (specifying the underlying acts for the alleged forcible removal of the Bosnian Muslim population from Srebrenica); and paragraphs 51–57 (specifying the underlying acts for the alleged forcible removal of the Bosnian Muslim population from Žepa) as well as in paragraphs 58–59 (specifying the role and actions of the Accused in furtherance of the JCE to Forcibly Remove the populations from Srebrenica and Žepa). In addition, the Indictment alleges that it was foreseeable to the Accused that "individual criminal acts, such as individual opportunistic killings and foreseeable targeted killings and persecutory acts as described in paragraphs 22, 23.1 and 34 of [the] Indictment, would be carried out by Serb forces" during the JCE to Forcibly Remove the populations of Srebrenica and Žepa. *See* Indictment, para. 61. The Accused's liability for this extended form of the JCE will be discussed in a separate section of this Chapter relating to his participation in the charged JCEs.

3976 Indictment, paras. 35, 70–71.

3977 Prosecution Final Brief, para. 885.

to leave the enclaves.[3978] The Chamber has dealt with the issue of free will in its legal findings on forcible transfer. It recalls that the Majority, Judge Nyambe dissenting, found, in this regard, that the busing of approximately 25,000–30,000 Bosnian Muslim civilians from Potočari and nearly 4,400 from Žepa—two groups primarily consisting of women, children, and elderly—constituted forcible transfer.[3979]

1009. A second set of arguments raised by the Accused is that there was no common plan to expel the population, and that the VRS did not make the decision to remove the Bosnian Muslim populations from the enclaves.[3980] The Accused submitted that this decision was taken by UNPROFOR in the case of Srebrenica, and by the BiH authorities with regard to Žepa.[3981] The Chamber will deal with these and other more specific submissions on the evidence, where applicable, when setting out its findings below.

2. Findings

(a) Policy of Ethnic Separation: Six Strategic Objectives–Directive 7

1010. While the Indictment alleges that the JCE to Forcibly Remove began in March 1995 with the issuance of Directive 7, the Majority finds that, as early as 1992, a policy had been set in place by the RS aimed at ridding the eastern enclaves of its Bosnian Muslim populations. In this regard, the Majority recalls in particular its finding on the adoption and implementation of the Six Strategic Objectives in May 1992, followed by Directive 4, issued in November of that same year.[3982] The Majority further recalls the evidence of Momir Nikolić, who testified that he himself, and all members of the Bratunac Brigade, were briefed as early as 1994, to do "everything that could ensure that the life becomes unbearable [...] so that the Muslims would leave the enclave because of that situation".[3983] The policy was further reaffirmed by the issuance of Directive 7 on 8 March 1995 which issued the following direction to the Drina Corps:

> As many enemy forces as possible should be tied down by diversionary and active combat operations on the N/W part of the front, using operational and tactical camouflage measures, while in the direction of the Srebrenica and Žepa enclaves complete physical separation of Srebrenica from Žepa should be carried out as soon as possible, preventing even communication between individuals in the two enclaves. *By planned and well-thought out combat operations create an*

3978 Accused Pre-Trial Brief, para. 192; Accused Closing Argument, T. 19508–19511, 19515–19516 (22 August 2012).
3979 *See supra* para. 842.
3980 Accused Closing Argument, T. 19478–19479, 19516–19157, 19525 (22 August 2012).
3981 Accused Closing Argument, T. 19508–19511, 19522 (22 August 2012).
3982 *See supra* paras. 162–165.
3983 Momir Nikolić, T. 12273 (4 April 2011). *See also ibid.*, T. 12274–12282 (4 April 2011), T. 12343–12344 (5 April 2011); Ex. P02158.

unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa.[3984]

1011. The Accused submits that the VRS's goal was not to create unbearable living conditions for the civilian population, and relies in this respect on a statement by Franken which refers, *inter alia,* to the black market trade relationship that was established between the Bosnian Serbs and the Bosnian Muslims.[3985] The Accused argues that no such relationship would have been established if there was an intention to create totally unbearable conditions for the populations of the enclaves.[3986] The Majority, notes, however, that Franken was referring to the "first few months" of 1995, following his arrival in January of 1995.[3987] Franken further stated that the black trade market was a proposal amongst the civilian authorities of the warring parties and was intended as an attempt to normalize relations between the Bosnian Serbs and Muslims. Moreover, Franken testified, this trade came to an end after only a few months.[3988] The existence of a black market trade relationship between the Serbs and Muslims in the first months of 1995 does not negate the existence of a plan by the VRS to create unbearable conditions for the inhabitants in the enclaves.[3989] In the view of the Majority, and on the basis of the evidence of the effects the implementation of this Directive had as described in detail elsewhere in this Judgement and as highlighted below, the language of Directive 7 was clearly directed at both, the ABiH as well as Bosnian Muslim civilian population in the enclaves.

1012. The Accused further submits that Directive 7 was never implemented and instead replaced by Directive 7/1 issued on 31 March 1995, which did not include a reference to the creation of unbearable living conditions.[3990] The Majority, notes, firstly, that already on 20 March 1995, the Drina Corps Command issued an order for combat operations forwarding, verbatim, the goal set out in Directive 7 to create an unbearable situation of total insecurity for the inhabitants of the enclaves to its subordinate brigades.[3991] Second, the evidence demonstrates that contrary to the Accused's position, Directive 7/1 did not replace Directive 7, but served as the military translation of the political goals set out in the text of Directive 7. Military orders issued after Directive 7/1 set out tasks pursuant to Directive 7 and Directive 7/1.[3992] The Majority in this regard specifically notes the

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3984 Ex. P01214, p. 10 (emphasis added). *See supra* Chapter IV. 2. (a).
3985 Accused Closing Argument, T. 19484–19485; Ex. P00607, pp. 1–2.
3986 Accused Closing Argument, T. 19484–19486 (22 August 2012).
3987 Ex. P00607, p. 1.
3988 *See* Ex. P00607, pp. 1–2.
3989 The Accused's arguments with respect to the legitimacy of the VRS attacks on the respective enclaves are dealt with in the Chamber's discussion below, where appropriate.
3990 Accused Final Brief, paras. 380–387; Accused Closing Argument, T. 19467–19468 (22 August 2012).
3991 Ex. P02719 (issued on 20 March 1995), p. 6.
3992 *See also* Ex. P02509, p. 1 (a combat report issued on 16 May 1995, signed by Krstić and addressed to the RS and the forward command post of the Main Staff, which records that the Drina Corps is continuing with preparations of defence around the enclaves of Srebrenica and Žepa, "in accordance with your order", but that they "are currently unable to implement your order to fully close off the enclaves and carry out attacks against them because

order for active combat operations issued by Živanović on 2 July 1995, which in particular ordered that the task of improving the VRS's tactical position "in the depth of the area" with a view of "creat[ing] conditions for the elimination of the enclaves", shall be done "pursuant to Operations Directive 7 *and* 7/1" of the VRS Main Staff.[3993] The Majority, Judge Nyambe dissenting, is therefore satisfied that the political goals set out in Directive 7—which, the Majority emphasises, were endorsed by Karadžić as the Supreme Commander of the armed forces of the RS by his signing of the Directive—were implemented through military orders.

(b) Restrictions of UNPROFOR Re-Supply and Humanitarian Aid Convoys

1013. The Chamber recalls here the specific instruction in Directive 7 relating to the treatment of UNPROFOR. The Directive set out, in relevant part:

> The relevant State and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves *and the supply of material resources to the Muslim population,* making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion.[3994]

1014. According to the Accused such restrictions on UNPROFOR supplies cannot be considered "in any way an act that contributed to the forcible removal of the population".[3995] In addition, the Accused submits, the VRS had no control over humanitarian convoys, so that the failure to deliver humanitarian aid to the enclaves cannot be attributed to them.[3996]

1015. The Chamber has already found elsewhere in this Judgement that the VRS did engage in restrictions on convoys delivering humanitarian aid and UNPROFOR re-supply convoys to both enclaves.[3997] Through and by these restrictions which steadily increased from March 1995 up until July, the Majority finds that the enclaves were, as envisaged by Directive 7,[3998] "squeezed" to the point where the living circumstances for the Bosnian Muslim population became unbearable.[3999]

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we do not have sufficient forces"); Richard Butler, T. 16527–16529 (12 July 2011) (testifying that the order from the Main Staff to which Krstić is referring to, to "fully close off the enclaves" is a task articulated in Directive 7, which called for ensuring the "physical separation" of the enclaves). Similarly, an order from Mladić dated 11 October 1995 regarding the blocking of enemy offensives on the western RS front specifically referred to Directive 7 by ordering: "Combat action security: as per Directive no. 7". Ex. D00264, p. 3. *See also* Adjudicated Fact 66 (Directive 7/1 was issued on the basis of Directive 7).

3993 Ex. P01202, p. 3 (emphasis added).

3994 Ex. P01214, p. 14 (emphasis added).

3995 Accused Pre-Trial Brief, para. 199. *See also* Accused Closing Argument, T. 19470 (22 August 2012).

3996 Accused Closing Argument, T. 19472, 19476–19477 (22 August 2012).

3997 *See supra* para. 196.

3998 *See* Ex. P01214, p. 14. *See supra* para. 188.

3999 Rupert Smith, T. 11541–11542 (21 March 2011); Rupert Smith, Ex. P02086, PT. 17472, 17484 (5 November 2007). Smith understood the restrictions of humanitarian supply to be a method whereby the aim was to "squeeze" the enclaves; controlling the flow of resources into the enclaves required only a limited amount of forces, and at the same time, put pressure on the civilian population in the enclaves which would lead to a decline in popular support of the ABiH inside the enclaves. It was also a method of controlling the UN. Rupert Smith,

They also resulted in the reduced operational readiness of UNPROFOR and its inability, as a result, to carry out its mandate.[4000] As a consequence, a devastating humanitarian situation engulfed the enclaves by early July, leaving an estimated 42,000 persons inside Srebrenica and the approximately 6,500 to 10,000 people in Žepa without sufficient food, water or medical supplies, aware of the inability of DutchBat to protect them, and in fear of what was to come.[4001]

(c) Military Activities Aimed at Terrorising the Civilian Population

1016. In addition to the restrictions and attacks on UN positions, the VRS steadily increased the shelling and sniping of the Srebrenica enclave in May and June of 1995. At the end of May 1995, as retaliation for the NATO air-strikes on VRS held territory, the enclaves were shelled and UN hostages were taken. The shelling killed a girl and wounded many others. By June, the Srebrenica enclave was surrounded by VRS forces, and there was increased shelling at the ABiH located within the enclave.[4002] In early July, the shelling intensified. The VRS fired into the enclave indiscriminately, targeting UN facilities and causing several civilian deaths.[4003] By 8 July, around 4,000 Bosnian Muslims who had been living in a Swedish Shelter Project for "refugees" fled north into Srebrenica town.[4004] The Majority has already found that some of the firing was directed at civilians and civilian objects.[4005] These activities had the simultaneous and intended effect of terrorising the civilian population.

1017. In this regard, the Majority specifically recalls its findings of an operation carried out by members of the 10th Sabotage Detachment together with a unit of the Bratunac Brigade in the night of 23–24 June 1995, by which these forces entered the Srebrenica enclave through an old mine tunnel.[4006] This incident, while not specifically mentioned in the Indictment, is covered by paragraph 38 of the Indictment, which alleges that from March 1995 through to the end of July 1995, the VRS shelled and sniped various civilian targets in the enclaves as part of the effort to make life for the inhabitants unbearable.[4007] The Accused argues that this was a military operation

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T. 11541–11542 (21 March 2011). *See also* Ex. D00122 (UN report on Srebrenica), p. 56 (referring to the VRS continuing to tighten their "squeeze" on the safe area from mid-February 1995 upward); Richard Butler, T. 17467 (31 August 2011). *See also* para. 189, n. 685.

4000 *See supra* para. 201.

4001 *See supra* paras. 203–204. The Majority finds the Accused's argument that Directive 7 was not conducive to depriving the population of what they needed for survival, to be unfounded as the evidence adduced clearly establishes the patent lack of all bare necessities in both enclaves. Accused Closing Argument, T. 19468–19469 (22 August 2012).

4002 *See supra* para. 210.

4003 *See supra* para. 220.

4004 *See supra* para. 221.

4005 *See supra* paras. 208–209.

4006 *See supra* para. 211.

4007 *See* Indictment, para. 38. The Chamber notes, further, that paragraphs 58–59 of the Indictment set out the acts carried out by members of the JCE to implement the forcible removal JCE, including the shelling of civilian targets in Srebrenica and Žepa. Paragraph 60 sets out the specific acts the Accused is alleged to have committed

and there was no intention to attack the civilian population or intimidate it.[4008] The Accused relies, in this regard on a plan issued by Salapura on 21 June 1995, setting out the attack, in which explicit reference is made to the fact that casualties among women and children should be avoided.[4009] He further argues that a letter of Ramiz Bećirović to the ABiH command on 27 June 1995, in which he refers to the attack without reporting on any casualties,[4010] would have contained such information, if anybody had been hurt during the operation.[4011]

1018. The attack was carried out in the Vidikovac neighbourhood on the outskirts of the enclave in the early morning hours of 24 June 1995.[4012] Erdemović, one of the members of the 10th Sabotage Detachment who took part in the attack, testified that the purpose of the attack was to "[...] alert the military and the population, the people in Srebrenica, it was a sort of reconnaissance sortee".[4013] The forces entered the neighbourhood, fired a number of Zoljas—shoulder-launched rocket propelled grenades—at the buildings, and retreated back through the tunnel within a timeframe of ten minutes.[4014] The attack resulted in a number of wounded and the death of one woman.[4015] Momir Nikolić testified that he spoke to UNPROFOR the day after the attack, and discovered that UNPROFOR was in fact fed misinformation that this attack was the result of a conflict between Bosnian Muslim factions that existed in the enclave.[4016]

1019. The Chamber further notes that while Bečirović's letter of 27 June 1995 to the ABiH Command does not make explicit reference to the death of the woman and the wounded civilians that were the result of this attack,[4017] he does include this information in a more detailed report to the ABiH Command only three days later, on 30 June 1995.[4018] This report describes the incident as follows:

> [t]he aggressor did succeed on 24 June 1995 in using an old corridor from the Sase lead and zinc mine to break through into Srebrenica town centre. They fired 9 *zoljas* /hand-held rocket launchers/ at the Vidikovac suburb and opened infantry fire. They killed one woman, wounded one male civilian and one child and then managed from a nearby hill, 300 meters from the town

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"individually or in concert with other members of the JCE" in furtherance of the JCE to Forcibly Remove, and refers back to, *inter alia,* paragraph 38 of the Indictment.

4008 Accused Closing Argument, T. 19487 (22 August 2012).

4009 Ex. P02200, p. 2.

4010 Ex. D00230.

4011 Accused Closing Argument, T. 19487 (22 August 2012).

4012 Momir Nikolić, T. 12354–12355 (5 April 2011); Osman Salkić, T. 7865 (22 November 2010). *See also* Ex. P00986, p. 2.

4013 Dražen Erdemović, T. 1880–1881 (17 May 2010).

4014 Dražen Erdemović, T. 1880–1881 (17 May 2010); Momir Nikolić, T. 12355 (5 April 2011); Osman Salkić, T. 7865 (22 November 2010).

4015 *See supra* para. 211.

4016 Momir Nikolić, T. 12355–12356 (5 April 2011).

4017 Ex. D00230.

4018 Ex. P00986, p. 2.

> hospital, to fire one *zolja* and one *osa* /hand-held rocket launcher/ at the hospital and open infantry fire on it.[4019]

Momir Nikolić, to whom this description of the incident was put during his testimony, confirmed that this report referred to the attack carried out.[4020]

1020. Salapura, who conducted the operation, testified that the attack was a "display of force with no consequences",[4021] a "demonstration of force rather than anything else".[4022] According to Salapura, the action merely constituted a "warning to the forces in the Srebrenica enclave" to stop mounting attacks against Bosnian Serbs outside the enclave, and aimed at putting pressure on UNPROFOR to disarm the ABiH in the enclave.[4023] He testified, further, that the target was the police station where the command of the ABiH brigade was situated, but that they did not "carry that out completely" because of poor visibility due to fog.[4024] A portion of a report by DutchBat presented as a reconstruction of the attack states that projectiles were fired simultaneously into Srebrenica; that one projectile struck a house wounding one man; and that two people in the "Vitlovac" neighbourhood fled from their homes when the attack started, and were shot by people from the "raid group who were waiting near the mine entrance."[4025] Salapura confirms that DutchBat's report relates to the tunnel attack, and that the two people who fled their homes were shot.[4026] With respect to the projectiles that were fired, he testified "[b]ut it was foggy, and one was fired. One did go out. You can call it collateral damage. It happened. It's war. [...] Even on a football pitch, people play football and somebody gets hurt".[4027] During cross-examination by the Accused, Salapura insisted that the operation was not intended to inflict terror and that "it was a textbook example of a professional military operation behind the enemy lines", was "carried out very carefully, very fairly", "without any casualties", and that he was "very proud of it".[4028]

1021. The Majority acknowledges that the plan for this attack sets out that casualties among women and children should be avoided. However, the purpose of the attack and the manner in which this operation was carried out, as described above, makes it clear that the distinction between combatants and civilians was not a priority. This operation was carried out in a civilian neighbourhood. Srebrenica was a safe haven, and the fact that there were members of the ABiH present in the enclave and carrying out ambushes outside of it, did not, in the view of the Majority,

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4019 Ex. P00986, p. 2.
4020 Momir Nikolić, T. 12356–12357 (5 April 2011).
4021 Petar Salapura, T. 13518 (2 May 2011).
4022 Petar Salapura, T. 13532 (2 May 2011).
4023 Petar Salapura, T. 13518, 13519–13520 (2 May 2011). *See also* Osman Salkić, T. 7865 (22 November 2010) (testifying that this attack was a "test by the VRS to see how the UN would respond").
4024 Petar Salapura, T. 13532 (2 May 2011).
4025 Ex. P00961, p. 2.
4026 Petar Salapura, T. 13544–13546 (2 May 2011).
4027 Petar Salapura, T. 13545–13546 (2 May 2011).

make the entirety of the enclave a military target. These forces fired nine zoljas into a suburban neighbourhood in the middle of night in just ten minutes, despite there being no visibility due to fog. When civilians living in a nearby house fled their home, they were shot, and one was killed. The 10th Sabotage Detachment was an independent, well-trained elite unit directly subordinated to the Main Staff.[4029] Under these circumstances, they should not have carried out any attack. There was nothing professional about this operation, and it was not, as Salapura put it, carried out "carefully" or "fairly". In the context of increased restrictions on humanitarian aid and shelling of the enclave in the period directly preceding this attack, the Majority, Judge Nyambe dissenting, is satisfied that this attack had the dual function of warning the ABiH of the VRS's capabilities to carry out attacks in the enclave, as well as terrorising the civilian population in line with the goal of making life inside the enclave unbearable.

(d) Attack on the Srebrenica Enclave

1022. In early July, the situation worsened when, in line with the orders setting out operation Krivaja 95, the VRS started directly and more overtly attacking the Srebrenica enclave and Potočari.[4030]

1023. The Accused submits that the goal of Krivaja 95 was not to create an unbearable situation for the population of Srebrenica but rather, to launch an attack against the ABiH situated within the enclaves.[4031] The Majority recalls that the combat order for Operation Krivaja 95—the military operation against Srebrenica issued on 2 July 1995—makes explicit reference to Directive 7.[4032] This order includes as one of its objectives "[...] to create conditions for the elimination of the enclaves".[4033] The Majority notes, further, the order issued by Karadžić on late 9 July 1995, whereby the operation to attack the Srebrenica enclave was expanded to include the capture of the town;[4034] and recalls the video-footage depicting Mladić, accompanied by other high-ranking VRS officials entering Srebrenica town after its fall and declaring, *inter alia,* that "[...] we give this town

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4028 Petar Salapura, T. 13666–13667 (4 May 2011).

4029 Dražen Erdemović, Ex. P00215, PT. 10935 (4 May 2007); Dražen Erdemović, T. 1882 (17 May 2010). *See supra* paras. 120–122.

4030 *See supra* paras. 215–219; Ex. P02514, p. 4 (a daily situation report of the VRS Main Staff dated 6 July 1995 reporting the start of the VRS combat operations and detailing that units of the Drina Corps have been "prepared and grouped for active combat operations towards the enclaves of Srebrenica and Žepa").

4031 Accused Closing Argument, T. 19488, 19490–19497 (22 August 2012).

4032 Ex. P01202, p. 3.

4033 *See* Ex. P01202, p. 3; Adjudicated Fact 78. *See also supra* para. 217. *See also* Richard Butler, T. 16556–16557 (13 July 2011) (testifying that this wording suggests that the goal of the order was to create a humanitarian crisis and force the UN to evacuate the populations of the enclaves).

4034 Ex. D00041 (a telegram dated 11:50 p.m. on 9 July and typesigned by the Accused which states, *inter alia*, that Karadžić had "agreed with the continuation of operations for the takeover of Srebrenica, disarming of Muslim terrorist gangs and complete demilitarisation of the Srebrenica enclave"). *See also* Adjudicated Fact 97. *See also supra* n. 867.

to the Serb people as a gift" and "[f]inally, [...] the time has come to take revenge on the Turks in this region".[4035] It recalls, further, the evidence of UNMO Kingori who had regular meetings with representatives of both the VRS and the Bosnian Muslim side between April and July 1995 and testified that on the basis of discussions at meetings he attended with the VRS, it was clear to him that the VRS not only wanted the ABiH to leave the enclave, but also the Bosnian Muslim civilian population, so that it could be "inhabited by the normal people who are Serbs".[4036] Finally, the Majority also recalls Karadžić's speech before the 53rd National Assembly session on 28 August 1995, in which he stated, *inter alia*, that "[t]o tell the truth, there are towns that we've grabbed for ourselves, and there were only 30% of us. I can name as many of those as you want, but we cannot give up the towns where we made up 70% [...]. Due to strategic importance, they [citing to numerous towns, including Srebrenica] had to become ours".[4037] The Majority, Judge Nyambe dissenting, is satisfied, therefore, that the plan to attack and takeover Srebrenica, was aimed at removing the entire Bosnian Muslim population from the enclave, including both its military and civilian component.

1024. While the VRS continued to press deeper into the safe zone of Srebrenica, it launched attacks against UNPROFOR OPs in both enclaves and threatened UN personnel.[4038] Bosnian Muslims, terrified by the steadily intensifying VRS attacks saw no choice but to leave their homes and everything they owned behind.[4039] Many of them crowded around the DutchBat Bravo Company Compound in Srebrenica, desperate for protection.[4040] The VRS shelled this compound, resulting in several wounded.[4041] It then proceeded to shell both sides of the road on which the column of thousands of Bosnian Muslim civilians were making their way to the UN compound in Potočari to seek shelter after the fall of Srebrenica on 11 July 1995, leaving them petrified of what was to come.[4042] When this group of civilians finally arrived in Potočari they found themselves in what was described by one witness as "hell"—an unbearable humanitarian situation which was further exacerbated by constant intimidation, physical abuse and even killings of some Bosnian Muslims by Bosnian Serb Forces.[4043]

4035 *See supra* n. 916.
4036 Joseph Kingori, Ex. P00950, PT. 19169–19170 (13 December 2007).
4037 Ex. P02435, pp. 2–3.
4038 *See supra* paras. 222–223, 229, 600, 612.
4039 *See supra* para. 230.
4040 *See supra* para. 233.
4041 *See supra* para. 233.
4042 *See supra* para. 233. The Chamber has heard evidence of Bosnian Muslims who were fleeing from the burning homes towards Potočari. *See supra* para. 264.
4043 *See supra* paras. 243–244.

(e) Hotel Fontana Meetings, VRS Takeover of Potočari and Forcible Removal of the Population

1025. Against this backdrop, the Majority finds that the Hotel Fontana meetings discussed in detail elsewhere in the Judgement were a false demonstration of a good faith effort by the VRS to find a solution for the Bosnian Muslim population. These meetings were dominated by an atmosphere of threats and intimidation from the VRS side.[4044] The Majority recalls its finding, moreover, that at least before the third meeting on the morning of 12 July, the VRS had already made the decision to transfer the Bosnian Muslim women, children and elderly to Kladanj[4045] with a plan to murder the able-bodied men having already taken shape.[4046] While Mladić's words to Nesib Mandžić at the meetings were intended to give the impression that the Bosnian Muslim population had a choice in the matter, as the Majority has already established elsewhere,[4047] this was clearly not the case. Mladić was well aware of the fact—and was explicitly told several times at the meetings—that Nesib Mandžić, a Bosnian Muslim school teacher who attended the second and third meetings at Hotel Fontana[4048]—was not in the position to compel the ABiH to disarm as demanded by Mladić. The Hotel Fontana meetings were mere window-dressing for what had already been set in place behind the scenes.

1026. Several additional VRS and MUP forces approached Potočari early on the morning of 12 July with a view to taking control of it; by at least noon that day, this aim had been achieved.[4049] Tanks and guns were positioned in direct line above the UN compound, in clear sight.[4050] By the time the last meeting at Hotel Fontana started, at 10:00 a.m. that morning, the VRS already started to set in place the logistics required to carry out the massive transfer operation.[4051] Mladić's order for the mobilisation of buses had already been conveyed through the Main Staff on the evening of 11 July.[4052] Similarly, at the same time the third meeting at Hotel Fontana was to start on the morning of 12 July, the VRS was already making arrangements for fuel to support the removal operation.[4053] Additional arrangements for fuel were made by the VRS on the night of 12 July to ensure the smooth continuation of the operation the next day.[4054]

4044 *See, e.g., supra* paras. 247, 251, 255, 259.
4045 *See supra* para. 257.
4046 *See supra* paras. 1044–1046.
4047 *See supra* para. 1025.
4048 *See supra* para. 250.
4049 *See supra* paras. 262–265.
4050 Ex. P00608, p. 5 (a fax by Karremans sent to UNPROFOR superiors on 12 July concerning discussions held at Hotel Fontana, dated 12 July).
4051 *See supra* para. 257.
4052 *See supra* para. 269.
4053 *See supra* para. 269.
4054 *See supra* para. 271.

1027. The Majority notes here the Accused's argument that the forcible transfer of the population cannot be attributed to the VRS, "having in mind that this operation was carried out at the request of UNPROFOR and the civilian population of the enclave".[4055] The Majority finds, however, that UNPROFOR's interest in evacuating the civilian population from Srebrenica, as expressed on 11 July, was driven by humanitarian motives as a result of the VRS attack on the enclave and the risk of civilian casualties directly resulting from this attack.[4056] The Majority, Judge Nyambe dissenting, finds that the removal of the population was the direct result of VRS military activities against Srebrenica, negating the lawfulness of the operation under international law.[4057] Moreover, the Majority has heard evidence that DutchBat was taken by surprise at the early start of the removal process.[4058] Requested by Koster to report to Karremans inside the UN compound, Mladić refused, saying that he was in charge and it was best for DutchBat soldiers to cooperate.[4059] Finally, had it been the case that the removal of approximately 25,000–30,000 Bosnian Muslim women, children and elderly from Potočari was undertaken legitimately, there would have been no reason for Main Staff intelligence officer Radoslav Janković to seek Nesib Mandžić's signature on a piece of paper aimed at proving the legitimacy of the operation days after it had been completed.[4060]

(f) Attack on the Žepa Enclave

1028. Following the fall of the Srebrenica enclave and the completion of the operation to forcibly transfer the women, children and elderly from Potočari, the VRS turned its full attention towards Žepa. The Accused's submits that, as with the goal of Krivaja 95, the objective of the attack on Žepa (Stupčanica 95) was not the civilian population. In support of his argument, the Accused refers to Krstić's order launching the attack on Žepa dated 13 July which states, *inter alia,* that "[t]he civilian Muslim population and UNPROFOR are not targets of our operations. Collect them together and keep them under guard, but crush and destroy armed Muslim groups".[4061] The Chamber acknowledges that the Bosnian Serb Forces may have had a legitimate interest in targeting the ABiH which was present within the Žepa enclave and engaged in combat with the VRS. However, the mere inclusion of this language in Krstić's report does not convince the Majority, in and of itself, that the VRS operation against Žepa was only aimed at the ABiH.

1029. The evidence clearly demonstrates, and the Chamber has already found, that by late June, the VRS had already attacked most of UNPROFOR's OPs around Žepa, and warned UNPROFOR it

4055 Accused Closing Argument, T. 19511 (22 August 2012). *See also ibid.*, T. 19508–19510 (22 August 2012).
4056 *See, e.g.*, Ex. P00608, p. 2.
4057 *See supra* paras. 798–800.
4058 *See supra* para. 275.
4059 *See supra* para. 277.
4060 *See supra* para. 302.
4061 Ex. P01225, p. 4; Accused Final Brief, paras. 431–432.

would continue with these attacks until UNPROFOR agreed to leave the enclave. In the week prior to Krstić's order, sporadic artillery, mortar and heavy machine gun fire was directed at the center of Žepa town.[4062] The VRS's activities resulted in the wounding of several civilians, and destruction of over 30 houses in neighbouring villages.[4063] By that time, the increased restrictions on humanitarian aid to the enclave had, similarly, resulted in a rapidly deteriorating humanitarian situation.[4064] Moreover, Krstić's order also refers to the objective of "liberating" and "eliminating" the enclaves, reflecting the fact that the VRS objective had expanded from improving its tactical position in Žepa with a view to targeting the ABiH to taking the safe zone over by force.[4065] The Majority finds, therefore, that at least by 13 July 1995, the operation against Žepa was aimed not only at targeting the ABiH which had not been demilitarised, but also at taking control of the safe zone, and thereby, its civilian population.

1030. The attack on Žepa followed the same pattern and course as the attack on Srebrenica. At a moment when the enclave was at its most vulnerable—UNPROFOR unable to defend the enclaves and a humanitarian crisis looming amongst its population—the VRS made plans to launch its final attack to "liberate" the enclave. On the evening of 12 July at around 9:00 p.m., a meeting was held at the Bratunac Brigade Headquarters;[4066] Mladić who arrived about an hour into the meeting, greeted those present, congratulated them on the success in Srebrenica, and assigned Krstić to prepare for the operation to "liberate" Žepa,[4067] ordering that the same troops that had been engaged in Srebrenica be used to carry out this operation.[4068] Following Mladić's instructions during the meeting at the Bratunac Brigade Headquarters, Krstić indeed issued an order the following day on 13 July which marked the start of the full-scale military offensive against Žepa.[4069]

4062 Ex. P02103; Ex. P00580, p. 2 (indicating that sporadic artillery, mortar and heavy machine gun fire was directed particularly at Žepa town during the week prior to 14 July).

4063 Ex. P02103.

4064 *See, e.g.*, Ex. P00580 (a report by Civil Affairs Officer David Harland dated 15 July, referring to the increased attacks by the VRS on UNPROFOR and UNHCR convoys, and that there was almost no water, electricity or gas at that stage).

4065 *See supra* para. 612. *See also* Ex. D00055, p. 15, para. 57.

4066 *See supra* paras. 317, 612, n. 1386.

4067 Mirko Trivić, Ex. P01197, PT. 11841–11842 (21 May 2007). Mladić expressly stated that the success [of the operation in Srebrenica] should be capitalized upon and operations should continue to liberate Žepa". Mirko Trivić, Ex. P01197, PT. 11842 (21 May 2007). *See also* Ex. P01444, p. 28 (an entry in Trivić's contemporaneous diary containing notes of the meeting, recording, *inter alia*, "[w]e need to take advantage of this moment of confusion, both of the international community and the enemy").

4068 Mirko Trivić, Ex. P01197, PT. 11842–11843 (21 May 2007). *See also* Ex. P02531 (a report by Dragomir Vasić, the Chief of the Zvornik CJB, dated 13 July 1995, in which he states that at a meeting held with Mladić in the morning of this day, Mladić told him that the VRS was "continuing operations towards Žepa and leaving all other work to the MUP", including, *inter alia*, the completion of the forcible removal of the Bosnian Muslim population).

4069 *See supra* para. 612, n. 2639.

(g) "Negotiations" on 13 July

1031. The population of Žepa was in a state of panic following the fall of Srebrenica on 11 July and with the news of the ensuing events spreading quickly, the RS media announced that Žepa would soon be taken.[4070] This panic was intended by the VRS, and it was useful to them; it allowed them to pose a series of impossible conditions in the guise of a "negotiation"[4071] held between VRS officials including the Accused and two members of the Žepa War Presidency on 13 July at Bokšanica.[4072] The shared aim of the VRS with respect to both enclaves was highlighted by the Accused who stated at this meeting that "Srebrenica ha[d] fallen and now it's Žepa's turn. We can go about it in two ways. What I'm offering you is for all of you to leave Žepa, to be evacuated, get on the buses and leave".[4073] The only alternative offered by the Accused to this "evacuation" was the use of military force against the enclave.[4074]

1032. The Accused argues that these "negotiations" were aimed at allowing able-bodied men to surrender their weapons and leave, and not at the expulsion of the population.[4075] In reliance on this position, he refers to a report issued by the Accused on 13 July, intended to update Mladić and Krstić on the situation in Žepa, in which he states that the Bosnian Muslims "have informed a large number of civilians and soldiers that they will all be allowed to leave or to stay in the Žepa area, if they surrender their weapons and recognize the Serbian government".[4076]

1033. The Chamber recalls that the Bosnian Muslim representatives attending the "negotiations" stated that they were authorised to resolve the problem of Žepa peacefully, subject to a number of guarantees, and requested, *inter alia,* three days to consult the population of Žepa and the leadership in Sarajevo about the decision to leave Žepa.[4077] The VRS rejected this request and demanded that the necessary consultations be completed within a matter of hours, or the evacuation would start, threatening with the use of military force as the only alternative.[4078] In the view of the Majority, Judge Nyambe dissenting, conditioning the choice to stay in the Žepa enclave on the forced recognition of the Serbian government and the threat of the application of force should the terms of the proposed "evacuation" be denied, did not leave much leeway for the population to exercise free

4070 *See supra* para. 603; Ex. P00580, p. 2.
4071 *See supra* para. 605.
4072 *See supra* paras. 604–611.
4073 *See supra* para. 607; quote from Hamdija Torlak, T. 4294 (23 August 2010).
4074 *See supra* para. 609. *See also* Ex. P00145, p. 1 (in which the Accused, reporting to, *inter alia,* Mladić, on the outcome of the negotiations, states that "[i]f they reject the evacuation under the conditions already offered, we are planning to start with combat activities").
4075 Accused Closing Argument, T. 19516 (22 August 2012).
4076 Ex. P00145, p. 1; *See supra* para. 611.
4077 *See supra* paras. 608–610.
4078 *See supra* para. 609.

choice as to whether they wanted to stay or leave the enclave.[4079] If it was the case, as suggested by the Accused, that the aim of the "negotiations" was to allow the able-bodied men to surrender their weapons, there would have been no reason to reject the Bosnian Muslim representatives' request for time to consult with their leadership, considering especially that it was clear to the VRS representatives that the Bosnian Muslim representatives attending the "negotiations" were not authorised to make any decisions concerning the ABiH.[4080]

(h) Resumed Attacks on Žepa and Forcible Removal of the Population

1034. Following the rejection of the VRS conditions by the Bosnian Muslims, the VRS resumed its attack on Žepa on 14 July 1995, shelling the centre of the enclave and taking control of the remaining UNPROFOR OPs in and around the enclave.[4081] On 20 July, the VRS used loudspeakers to exert psychological pressure on the Bosnian Muslim population to return to the enclave in order to be removed.[4082] Well aware of the fact that the members of the War Presidency of Žepa were not authorised to deal with any issues related to the ABiH, the VRS nevertheless ordered new "negotiations" a couple of days after its first attack, which eventually led to the signing of an "agreement" on 24 July concerning the disarmament of the ABiH and the "evacuation" of the civilian population.[4083] On the morning of 25 July 1995, the forcible transfer of the Bosnian Muslim population of Žepa, consisting mainly of women, children and elderly, commenced.[4084] Amongst others, Mladić, Krstić and Pećanac were also present during the operation which lasted two days, with Mladić entering buses and telling frightened, tired and hungry Bosnian Muslim civilians that they were being given their life as a gift.[4085] Like the forcible removal in Potočari, the VRS arranged for the logistics of the operation, organising buses and trucks, and procuring fuel.[4086]

1035. The Majority, Judge Nyambe dissenting, further recalls its finding that, similar to the 17 July Declaration signed by Nesib Mandžić with respect to the "evacuation" from Potočari, the "24 July 1995 Agreement" for Žepa was not genuine. As discussed in more detail elsewhere in the Judgement, this "agreement" was signed by the Bosnian Muslim representatives under fear and

4079 *See supra* paras. 647, 825–833.
4080 *See supra* para. 610.
4081 *See supra* para. 612.
4082 *See supra* para. 621.
4083 *See supra* paras. 629–633. Ex. D00051. The Accused asserts that "this agreement is completely valid and in keeping with the Geneva Conventions". Accused Closing Argument, T. 19523 (22 August 2012). The Chamber notes that the "agreement" indeed mentions the Geneva Conventions and its Additional Protocols, however the Majority, Judge Nyambe dissenting, considers that the evidence presented before the Chamber indicates that the VRS never aimed at keeping in line with international law, neither in the case of Srebrenica, nor with regard to Žepa.
4084 *See supra* para. 640.
4085 *See supra* paras. 642–643, 648.
4086 *See supra* para. 640.

duress and was clearly an attempt by the VRS to legitimise the removal of the population from the enclave.[4087]

1036. The Accused submits that the "evacuation" of the Bosnian Muslim population was "planned secretly by the BH Federation leadership" and was "kept secret in order to accuse the VRS of attacking the civilian population and driving them out".[4088] The Accused refers to correspondence between the BiH President Alija Izetbegović and Delić on 18 July, and between Izetbegović and Mehmed Hajrić on 19 July.[4089] These letters, as discussed elsewhere in this Judgement in more detail,[4090] indeed reflect that prior to resuming negotiations in Bokšanica on the fate of Žepa's population on 19 July, the War Presidency had agreed internally to try to make arrangements with the VRS for the evacuation of the civilian population, but was not receiving clear guidance from the BiH political leadership in Sarajevo.[4091] In the view of the Majority, Judge Nyambe dissenting, the fact that BiH authorities were discussing a possible evacuation scenario for the Bosnian Muslim population at this time was the direct result of VRS restrictions on the enclave leading to an impending humanitarian crisis, and VRS military activities which terrorised the civilian population.

1037. The Majority therefore does not find that the correspondence between Izetbegović, Hajrić and Delić on 18 and 19 July is incompatible with a finding that the removal which ultimately took place on 25–27 July was intended by the VRS and that it was forced.[4092] The removal was organised and carried out by the VRS, with the Accused playing a central role in the operation.[4093] It was the result of the implementation of the goal of Directive 7 starting from March 1995, which ensured that the inhabitants of Žepa had no further hope of survival in the enclave. The Chamber has already established that as a result of the VRS attacks on the enclave, and in the context of the events in Srebrenica in the previous days, the Bosnian civilian population of Žepa did not feel safe.[4094]

4087 *See* Ex. P00028. *See supra* nn. 2708, 4044.
4088 Accused Closing Argument, T. 19519, 19522 (22 August 2012).
4089 *See* Ex. D00106; Ex. D00054.
4090 *See supra* n. 2668.
4091 *See supra* n. 2668.
4092 *See* Ex. D00363, pp. 1–2. This exhibit consists of a cover letter signed by Bećir Sadović, sent to General Delić on 18 July 1995, in which Sadović proposes to Delić that (Item 1) "Perhaps I could have women, children and the elderly from Žepa evacuated by UNPROFOR. Would you accept this?" The cover letter then proceeds to state (Item 2) that efforts are being made to secure more volunteers to assist the ABiH, and ends by stating that an evacuation plan for the population has been drafted in case "Items 1 and 2 above fail". The draft plan is attached to the cover letter. The signatories of the draft plan are Bećir Heljić, Rašid Kulovac and Sejdalija Sućeska, and the draft records that it has also been submitted to Alija Izetbegović.
4093 *See supra* paras. 632, 641, 824.
4094 *See supra* para. 647, n. 2798.

3. Conclusion

1038. The Majority, Judge Nyambe dissenting, finds that the restrictions of convoys and military actions against the enclaves as detailed above and elsewhere in this Judgement were carried out pursuant to the strategic goals set out in Directive 7.[4095] These military actions were connected, and occurred almost in unison. They demonstrate the planned and coordinated efforts by the VRS, laying the groundwork for the realisation of the ultimate aim of Directive 7: the physical removal of the Bosnian Muslim population, including both the ABiH and its civilian inhabitants, from the enclaves of Srebrenica and Žepa. Within a very short period of time, the plan of ethnic separation that had been devised by the RS leadership in the previous years had been implemented, and it was done so successfully. The VRS managed to transport approximately 25,000-30,000 Bosnian Muslim civilians—with the exception of at least 1,000 men whose fate is discussed elsewhere in this Judgement[4096]—from Potočari to Kladanj—with the assistance of the MUP—in a matter of days. Less than two weeks later, nearly 4,400 Bosnian Muslims were transported out of Žepa over a period of only three days.[4097]

1039. The logistics required for these massive endeavours necessarily entailed the coordinated involvement of several individuals across the VRS leadership.[4098] The Chamber has found that Mladić, as well as security, and intelligence officers Radoslav Janković, Popović, Momir Nikolić and various corps and brigade officers were present at the UN compound in Potočari on the days of the forcible transfer on 12 and 13 July,[4099] and that they were directly involved on the ground and controlled the process. In Žepa, the Accused directed Bosnian Serb Forces while assisting the Bosnian Muslim population onto buses.

1040. The Majority, Judge Nyambe dissenting, has no doubt that at the latest by early March 1995 a common plan existed in the Bosnian Serb leadership to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves. The acts that were taken to implement this plan, as discussed above, were carried out in furtherance of the JCE to Forcibly Remove. The plan was carried out by a plurality of persons, including numerous high-ranking VRS officers and their subordinates, and members of the MUP. The participation of the Accused in this plan, and the extent to which he contributed to it, will be discussed separately.[4100]

4095 *See supra* paras. 1010–1012.
4096 These men were detained at the White House and instead transported to Bratunac on 12 and 13 July. *See* Chapter V. B. 4. (d).
4097 *See supra* paras. 304, 649.
4098 *See supra* paras. 268–274, 640.
4099 *See supra* Chapter V. B. 4. (b).
4100 *See infra* Chapter VIII. E.

D. JCE to Murder the Able-Bodied Muslim Men from Srebrenica

1. Submissions of the Parties

1041. The Indictment charges the Accused with participation in a joint criminal enterprise to murder the able-bodied Bosnian Muslim men from the Srebrenica enclave ("JCE to Murder").[4101] The Indictment alleges that the members of the JCE to Murder include, but are not limited to, Karadžić, Mladić, the Accused, Živanović, Krstić, Borovčanin, Salapura, Beara, Radoslav Janković, Pećanac, Popović, and Momir Nikolić.[4102] The Prosecution alleges that sometime between the evening hours of 11 July and the morning of 12 July 1995, Mladić and others developed a plan to murder the able-bodied Bosnian Muslim men located in Potočari and that this plan to murder soon encompassed the over 6,000 Bosnian Muslim men captured from the column on 12 and 13 July.[4103]

1042. The Prosecution further alleges that the plan to murder was implemented from the moment the able-bodied Bosnian Muslim men were separated and transported out of Potočari on 12 July, and continued until at least 25 July with the widespread and systematic execution of these men and the Bosnian Muslim men from the column.[4104]

1043. The Accused submits that there was no plan to murder the able-bodied Bosnian Muslim men from Srebrenica, but in the alternative, had there been such a plan to murder, the Accused was not aware of it, and no such plan was ever implemented.[4105]

2. Findings

(a) Development of a common plan to murder the able-bodied Muslim men from Srebrenica

1044. As has been previously established, on 11 July 1995 thousands of Bosnian Muslims began to flee Srebrenica and gather at the UN compound in Potočari.[4106] That day Mladić stated during his

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4101 Indictment, paras. 18–22, 66–68.
4102 Indictment, paras. 35, 70–72.
4103 Indictment, paras. 18–20, 27; Prosecution Final Brief, paras. 495–496, 505–510, 534–536, 913–915. The Indictment alleges that the plan to murder was developed concurrently with the plan to forcibly remove. *See supra* para. 1009.
4104 Indictment, paras. 19–22; Prosecution Final Brief, paras. 91, 536, 913, 917–919. The Prosecution alleges that these systematic murders continued until late July or early August 1995 with the reburial of victims' bodies by the VRS continuing into November 1995. Prosecution Final Brief, paras. 91, 486.
4105 Accused Final Brief, paras. 468, 471; Accused Closing Argument, T. 19513 (22 August 2012). The Chamber notes that the majority of the Accused's submissions with regard to the alleged JCE to Murder concern questions of law or the alleged responsibility of the Accused and do not address the general allegations concerning the shared plan to murder and its implementation. *See, e.g.* Accused Final Brief, paras. 106–124. For a discussion of the Accused's submissions on the law of JCE, see *supra* paras. 886–887. For a discussion of the Accused's submissions regarding the acts and conduct of the Accused, see *supra* paras. 922–1006.
4106 *See supra* paras. 233, 241.

walkthrough of Srebrenica that the time had come to take revenge on the "Turks" in the Srebrenica region.[4107] The evidence indicates that by the night of 11 July, Mladić and other senior VRS officers had learned of the Bosnian Muslim men gathered in Potočari who were among women, children, and elderly.[4108]

1045. The Chamber recalls the conversation between Popović, Kosorić, and Momir Nikolić—all VRS security and intelligence officers—before the third Hotel Fontana meeting held on the morning of 12 July about an agreement that had been reached to separate the men of military age between 16 and 60 in Potočari and detain them in Bratunac.[4109] When asked by Nikolić what would happen to these men, Popović replied: "all the Balijas should be killed."[4110] These officers then discussed potential detention and execution sites.[4111] Following this, at the third Hotel Fontana meeting attended by VRS and Bosnian Serb civilian officials, Mladić stated that Bosnian Serb Forces would screen these Bosnian Muslim males in Potočari for war criminals.[4112] He also reiterated the threat he made in the second Hotel Fontana meeting that the Bosnian Muslims could either "survive or disappear".[4113]

1046. Considering the evidence cumulatively, the Majority is convinced that a plan to murder the able-bodied men from the Srebrenica enclave had materialised by the morning of 12 July. The discussions among the VRS intelligence and security officers alone demonstrate the existence of such a plan. Mladić's remark about screening these males for war criminals was, in the Majority's view, a false gesture based on what happened to them as is discussed below.

1047. Meanwhile, by the early morning of 12 July, Bosnian Serb Forces were aware that the column of Bosnian Muslims which had formed directly after the fall of Srebrenica had begun moving in the direction of Tuzla during the night of 11 July,[4114] attempting a breakthrough from the

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4107 *See supra* para. 236, n. 916.

4108 *See supra* paras. 248–249, 252–255; Ex. P02157, p. 19 (Momir Nikolić stating that: "I wrote up a report chronicling all the relevant intelligence and security information of the day including the estimate of 1000 to 2000 able-bodied Muslim men in Potočari and forwarded that report to my command and to the intelligence and security officers of the Drina Corps who I knew were present at the Hotel Fontana in Bratunac."). At the first Hotel Fontana meeting there was a discussion about the "refugees" in Potočari and arranging buses to transport them out of the area. *See supra* paras. 248–249. At the second Hotel Fontana meeting there was a discussion about the 15,000–20,000 Bosnian Muslims who had gathered in Potočari and the additional numbers that were expected to arrive overnight. *See supra* paras. 252–255. Based on the content of the discussions at these two meetings, the Chamber finds that Mladić and the other members of the Bosnian Serb Forces present were aware by the night of 11 July that Bosnian Muslim men were gathering in Potočari.

4109 *See supra* paras. 257, 790.

4110 *See supra* para. 257. As has been discussed, "balijas" is a derogatory term for Muslims. *See supra* para. 863.

4111 *See supra* para. 257.

4112 *See supra* para. 258.

4113 *See supra* para. 259.

4114 *See supra* paras. 237–240. The Chamber also notes that on 12 July, around 5:30 p.m., Popović sent a report referring to the column as well as the separation of men. In his "very urgent" report from the Drina Corps IKM in Bratunac to the VRS Main Staff, the Sector for Intelligence and Security Affairs, the Security Administration,

Srebrenica enclave.[4115] Throughout 12 and 13 July, Bosnian Serb Forces attacked the column and called on the Bosnian Muslims to surrender.[4116] Considering that the Bosnian Muslim men from the column were later also victims of the large-scale murder operation, the Chamber finds that the plan to murder the able-bodied Bosnian Muslim men from Potočari had necessarily evolved sometime between 12 and 13 July to include these Bosnian Muslim men from the column.

(b) Implementation of the common plan to murder the able-bodied Muslim men from Srebrenica

1048. While the women, children, and elderly were being transported with vehicles that arrived in Potočari in the early afternoon of 12 July upon Mladić's order and following arrangements made by the VRS,[4117] the separation of the males started.[4118] These males, including even boys between 12 and 15 years of age, were separated from the crowd and taken away by numerous members of the Bosnian Serb Forces in the presence of Mladić and Borovčanin as well as members of the 10th Sabotage Detachment, the Drina Corps, the Bratunac Brigade MP, the MP Battalion of the 65th Protection Regiment, the Drina Wolves, and other VRS and MUP personnel who had arrived in Potočari on the morning of 12 July.[4119] These officers and Mladić himself reiterated the same justification for this separation—it was to screen the men for war criminals.[4120]

1049. Throughout 12 and 13 July, a large number of Bosnian Muslim males in Potočari were separated from the women and children; stripped of their personal belongings, identification, and money; and then detained and mistreated in deplorable conditions in nearby houses, including the White House.[4121] From 12 to 13 July, at least 1,000 of these prisoners were transported by Bosnian Serb Forces from Potočari to Bratunac where they were again detained inside buildings, including the Vuk Karadžić School complex, as well as in vehicles that were parked throughout the town.[4122] By the evening of 13 July, Bratunac town was filled with a large number of buses and trucks packed with prisoners and parked in several locations, including outside the Vihor Company garages; in front and to the side of the Bratunac municipal building; in front of and inside the Bratunac Stadium; and around the Vuk Karadžić School complex.[4123] Before they were transported,

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Command of the Drina Corps, and its Security Department, Popović reported the presence of the column that "withdrew through Bokčin Potok towards Šiljkovići with intention to /?move/ via Kravica towards Udrć to Tuzla". He also referred to the Bosnian Muslims gathered in Potočari, stating that: "We are separating men from 17–60 years of age and we are not transporting them. We have about 70 of them so far and the security organs [...] are working with them". Ex. P02069; *See supra* para. 280.

4115 *See supra* para. 316.
4116 *See supra* paras. 315, 319.
4117 *See supra* paras. 68–273.
4118 *See supra* paras. 275–280.
4119 *See supra* paras. 275–280.
4120 *See supra* para. 280.
4121 *See supra* paras. 285–286, 291, 304.
4122 *See supra* paras. 293, 383.
4123 *See supra* para. 383.

the prisoners were not allowed to take their belongings with them.[4124] These belongings and identification cards were subsequently burned by members of the Bosnian Serb Forces between the evening of 13 July and the morning of 14 July.[4125] VRS and MUP members under the supervision of Momir Nikolić were involved in the separation and detention of the prisoners in the presence of senior VRS officials, including Mladić, as well as intelligence and security officers, including Popović, Radoslav Janković, and Kosorić.[4126]

1050. In accordance with the laws and regulations applicable at the time, the Bosnian Serb Forces had a duty to treat the prisoners humanely,[4127] but failed to do so. In the Chamber's view, the circumstances surrounding the detentions of the Bosnian Muslim males—the confiscation and destruction of their personal belongings and identification, and their inhumane treatment—are entirely inconsistent with any plan of the Bosnian Serb Forces but for a plan to murder. The swift and organised separation, detention, and transportation of at least 1,000 Bosnian Muslim males to Bratunac plainly shows that the members of the Bosnian Serb Forces acted in unison and in accordance with the sinister plan that had clearly been passed onto and shared among them.

1051. The intent of these Bosnian Serb Forces members—to implement the plan that had by then been shared by a large part of members of the Bosnian Serb Forces—is further evident in the murders of several Bosnian Muslim prisoners by members of the Bosnian Serb Forces in and around Potočari on 13 July.[4128] Further telling of the existence of the plan and its implementation are the facts that Bosnian Muslim men had already been murdered in Bratunac town on 12 and 13 July,[4129] and at Jadar River,[4130] as well as in Luke School where those who had managed to board the buses from Potočari with woman, children, and elderly, were subsequently murdered.[4131]

1052. On the morning of 13 July upon order of Momir Nikolić, the members of MUP deployed on the Bratunac–Konjević Polje–Milići road were directed to assemble the Bosnian Muslims in Konjević Polje and then transfer and detain them in Bratunac.[4132] Bosnian Muslims from the column who surrendered to or were captured by members of the Bosnian Serb Forces were subsequently detained at various sites along the Bratunac–Konjević Polje–Milići road including at

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4124 *See supra* para. 284.
4125 *See supra* para. 286.
4126 *See supra* paras. 317, 322–327, 333, 336–337.
4127 *See supra* para. 80. The Regulations of the Application of International Laws of War in the Armed Forces of the SFRY reflected the international laws of war as promulgated in the Geneva Conventions and were applicable to the Bosnian Serb Forces, providing for humane treatment of POWs and civilians in the hands of a party to a conflict. Ex. P02482, pp. 62–63, 74–76, Arts. 207–212, 253–261; Richard Butler, T. 16307–16308, 16319–16322 (8 July 2011).
4128 *See supra* paras. 309–314.
4129 *See supra* para. 389.
4130 *See supra* paras. 345–348.
4131 *See supra* paras. 310–314.

Konjević Polje,[4133] Sandići Meadow,[4134] and the Nova Kasaba Football Field on 13 July.[4135] The same patterns of mistreatment occurred in these locations: large numbers of these prisoners were also stripped of their personal belongings; held without adequate food, water, and medical treatment; and mistreated by their captors.[4136] At some detention sites their personal belongings were burned and some prisoners were killed by members of the Bosnian Serb Forces in or around the detention areas.[4137]

1053. Mladić visited the detention sites of Bosnian Muslim males from the column at various locations along the Bratunac–Konjević Polje–Milići road including sites at Konjević Polje, Sandići Meadow, and the Nova Kasaba Football Field where Mladić insulted and cursed the prisoners.[4138] He told a blatant lie to the prisoners that they would be exchanged.[4139] In the Nova Kasaba Football Field, one prisoner was killed by a VRS soldier in his presence.[4140] The gesture Mladić made in Konjević-Polje in response to Momir Nikolić's inquiry about the fate of the prisoners, which Nikolić understood to mean they would be killed,[4141] as well as Mladić's order to Malinić to halt the registration of the prisoners in the Nova Kasaba Football Field[4142] constitute further evidence that the prisoners were destined to be killed. Others that were operating at these detention sites included Beara;[4143] Salapura;[4144] Borovčanin;[4145] members of the Bratunac MUP and MP Battalion of the 65th Protection Regiment;[4146] members of the 1st PJP Company, the 2nd Šekovići Detachment, and the Jahorina Recruits;[4147] as well as countless numbers of other VRS soldiers and Bosnian Serb MUP. The prisoners in these locations—amounting to between approximately 2,500 and 5,000[4148]—were transported either to Kravica Warehouse or Bratunac town.[4149]

4132 *See supra* para. 322.
4133 *See supra* paras. 322–327.
4134 *See supra* paras. 328–334.
4135 *See supra* paras. 335–341.
4136 *See, e.g. supra* paras. 323–324, 329, 331, 336–337.
4137 *See, e.g. supra* paras. 336–337.
4138 *See supra* paras. 327, 333, 337.
4139 *See supra* para. 333.
4140 *See supra* para. 337.
4141 *See supra* para. 327.
4142 *See supra* para. 338.
4143 *See, e.g. supra* paras. 338, 340. On the morning of 13 July, Beara talked with Lučić, the Deputy-Commander of the 65th Protection Regiment, referring to "400 Balijas" in Konjević Polje and instructing to "[s]hove them all" in the Nova Kasaba Football Field. Ex. P00663a. *See supra* para. 320. Later that morning, Beara was involved in procuring vehicles for transporting the Bosnian Muslim prisoners in the same location. Ex. P02537. *See supra* para. 338.
4144 *See, e.g. supra* para. 336.
4145 *See, e.g. supra* paras, 330, 356, 358, 361.
4146 *See, e.g. supra* paras. 325, 336, 339, 348.
4147 *See, e.g. supra* paras. 330.
4148 In Sandići Meadow, approximately 1,000–2,000 Bosnian Muslims were detained and in the Nova Kasaba Football Field where those who were detained first in Konjević-Polje were also transported, there were between 1,500 and 3,000 Bosnian Muslim males detained. *See supra* paras. 323, 330, 336.
4149 *See supra* paras. 334, 339.

1054. The Chamber recalls that two large-scale murder operations took place in Bratunac between 13 and 14 July—in Cerska Valley and in Kravica Warehouse.[4150] In Cerska Valley, 150 Bosnian Muslim males were killed by unknown members of the Bosnian Serb Forces.[4151] In Kravica Warehouse, those who had been detained in the above-mentioned locations along the Bratunac–Konjević Polje–Milići road were brought in until the building was packed with the prisoners.[4152] Sometime in the afternoon of 13 July, intense shooting started following the incident in which one Bosnian Muslim prisoner who had taken a rifle from a member of the 2nd Šekovići Detachment killed one Bosnian Serb MUP member, as a result of which approximately 50 Bosnian Muslims were killed.[4153] Later that day, the members of Bosnian Serb Forces commenced shooting into the crowded warehouse, which lasted into the night and next morning.[4154] Those who survived the shooting were ordered to come out of the warehouse and were shot dead.[4155] Killings continued until the early evening of 14 July.[4156] The Chamber is convinced beyond reasonable doubt that the killings at Kravica Warehouse were executed so as to achieve the common plan, taking into account that the plan itself had already been developed and members of the Bosnian Serb Forces were engaged in the killings.

1055. The Chamber notes that that same day Borovčanin issued orders to his subordinates to block convoys of buses of women, children, and elderly from passing in front of Kravica Warehouse while Bosnian Muslim men were being murdered there, and later passed the warehouse himself as the murders continued and a pile of approximately 50 Bosnian Muslim bodies could be seen in front of the warehouse.[4157] This order of Borovčanin's is notably in line with an order that Mladić issued on the same day.[4158] With a view to "prevent the leakage of confidential information classified as military secrets", Mladić ordered, *inter alia*, the Drina Corps Command and its brigades, as well as 65th Protection Regiment, to close "the Konjević Polje–Krvavica[*sic*]–Bratunac and Rogatica–Borike–Višegrad roads to traffic" except for Bosnian Serb Forces' vehicles, and to set up blocks and checkpoints for control of traffic at Konjević Polje, "just outside Bratunac on the road to

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4150 The Chamber notes that during this period there were smaller scale killings at the Kravica Supermarket. *See supra* paras. 377–381.

4151 *See supra* paras. 349–352.

4152 *See supra* para. 355.

4153 *See supra* para. 358. In this respect, the Chamber notes that the evidence suggests that the killings at Kravica Warehouse might have started earlier than originally planned because of an altercation between a Bosnian Muslim and a member of the Bosnian Serb Forces. The Chamber finds, however, that such a mass killing would not have occurred without a plan to murder and if the murders were carried out earlier than originally intended, this does not change the fact that the Bosnian Serb Forces planned to murder the Bosnian Muslims at Kravica Warehouse and in fact did carry out this plan.

4154 *See supra* paras. 360–362.

4155 *See supra* para. 362.

4156 *See supra* para. 362.

4157 *See supra* paras. 356, 358, 361.

Kravica".[4159] He further ordered prevention of the entry of all local and foreign journalists in the wider area of Srebrenica and Žepa and to "[b]an and prevent the giving of information, the making of announcements and statements to the media regarding the course, situation and results of combat operations in this area and the overall activities in this area, particularly on *prisoners of war*, evacuated civilians, escapees and similar".[4160] When the order was issued, the afore-mentioned killings in Potočari and Bratunac had happened or were on-going. Particularly, the instruction to not to leak information on prisoners of war shows that there was a joint effort to hide the intended fate of Bosnian Muslim males from Srebrenica. Indeed, Beara and Deronjić were trying to make the necessary arrangements for burying the bodies of Bosnian Muslim men from Kravica Warehouse,[4161] which purpose was, in the Chamber's view, to conceal the evidence of those killings. The extensive involvement of Bosnian Serb Forces in the Kravica Warehouse killings is evident by the participation of the Civilian Protection service as well as members of the Engineering Company of the Zvornik Brigade in the burials at Glogova.[4162]

1056. The murder operation was to be carried out on the Bosnian Muslim males detained in Bratunac area. The evidence demonstrates that there was coordination particularly among VRS security and intelligence officers to achieve the plan. Beara ordered Momir Nikolić to make preparations for detaining Bosnian Muslim prisoners who were to be killed later in facilities in the area of responsibility of the Zvornik Brigade.[4163] Momir Nikolić delivered this order personally to Drago Nikolić, Zvornik Brigade Chief of Security.[4164] Later that night, the murder operation of the Bosnian Muslim prisoners was discussed openly by Beara, Deronjić, and Vasić during a meeting at the SDS Office in Bratunac.[4165] After receiving Beara's order from Momir Nikolić and a call from Popović requesting assistance, Drago Nikolić asked the Zvornik Brigade Chief of Staff, Dragan Obrenović, for assistance in bringing a large number of Bosnian Muslims from Bratunac to Zvornik and executing them.[4166] Upon Obrenović's approval, the Commander of the MP Company, Miomir Jasikovac was ordered to gather a group of Zvornik Brigade military policeman in Zvornik.[4167]

4158 Ex. P02420. The Accused sent a telegram containing the similar information around 2 p.m. on the same day. *See supra* paras. 934–937. The Chamber's findings on the Accused's involvement in the JCE to Murder will be made at the later stage.
4159 Ex. P02420, p. 1.
4160 Ex. P02420, p. 1 (emphasis added).
4161 *See supra* para. 364.
4162 *See supra* para. 369.
4163 *See supra* para. 402.
4164 *See supra* para. 408.
4165 *See supra* para. 403.
4166 *See supra* para. 406.
4167 *See supra* para. 406.

1057. The transportation and detention of a large number of Bosnian Muslim prisoners from Bratunac to Zvornik began the night of 13 July and continued throughout the day on 14 July.[4168] Other Bosnian Muslim males from the column were also detained in the Zvornik area after being captured in the area.[4169] The conditions of detention were noticeably similar to those in Potočari and Bratunac: the Bosnian Muslim prisoners were made to abandon their personal belongings and articles of clothing, and were not provided with sufficient amounts of water, food, or medical care.[4170] Also consistent with the pattern of detentions in Potočari and Bratunac, many Bosnian Muslim prisoners were mistreated and several were murdered by their captors in and around where they were detained.[4171]

1058. The Bosnian Muslim prisoners were detained and later murdered at the following locations in the Zvornik area: Orahovac near Lažete; Petkovci; the Ročević School and Kozluk; the Kula School, and Branjevo Military Farm and Pilica Cultural Centre.[4172] As with the detentions in the Potočari and Bratunac areas, these detention sites were supervised by several senior VRS officers including, *inter alia*, Mladić, Beara, Jasikovac, Popović, and Trbić.[4173]

1059. The Chamber highlights some of the actions made by these individuals in the respective killing sites during the crucial days. On the morning of 14 July at the Grbavci School detention site near Orahovac, Drago Nikolić coordinated the relief of the Zvornik Brigade MP that had been guarding prisoners there overnight by having them replaced with 20 to 40 VRS soldiers, but ordered the military police to remain nearby.[4174] Later that night Jokić contacted Beara and conveyed a message from the Main Staff, that Beara was to contact his command and that there were problems "with the people, I mean, with the parcel".[4175] In view of the situation at this time, the Chamber finds that the term "parcel" meant the Bosnian Muslim prisoners captured by various members of the Bosnian Serb Forces.

1060. On 15 July telegrams were sent by the Zvornik Brigade ordering members of the 2nd Battalion to be deployed to execute prisoners at the Ročević School and when these orders were not followed, Aćimović, Commander of the 2nd Battalion of the Zvornik Brigade, received a call from Drago Nikolić telling him that the orders came from higher up in the chain of command and had to

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4168 *See supra* paras. 407–412.
4169 *See supra* para. 280–527.
4170 *See supra* paras. 421, 424, 443, 445, 487.
4171 *See supra* paras. 425, 444, 489, 523, 536, 544, 549.
4172 *See supra* paras. 413–507.
4173 *See supra* paras. 414–418, 423, 425–426, 442, 461, 465, 467–470, 473.
4174 *See supra* paras. 417–418.
4175 Ex. P00016a; Richard Butler, T. 16756–16758 (18 July 2011). The conversation refers to the "higher house" and "number 155". 155 was the number for the operations centre of the VRS Main Staff HQ. *See supra* n. 225. The Chamber is satisfied that it was the VRS Main Staff which was trying to contact Beara.

be carried out.[4176] Popović later threatened Aćimović at the school for having not followed the orders to provide men for killing the Bosnian Muslim prisoners.[4177] Popović also stated that a number of Bosnian Muslim prisoners should be killed in Ročević.[4178] On the same day, Beara talked to Živanović and Krstić, the former and then current Commander of the Drina Corps respectively, asking for troops to carry out killings and stating that Mladić's orders in this regard had not been followed properly.[4179] While asking Krstić for troops, Beara stated that "there are still 3,500 'parcels' that I have to distribute and I have no solution".[4180] As stated above, the Chamber has no doubt that Beara was discussing the Bosnian Muslim prisoners who were detained in the Zvornik area. Moreover, evidence indicates that Beara and Popović were in close contact with each other in this area during this period.[4181]

1061. On the following day, 16 July, Popović requested 500 litres of fuel to be provided for transporting the Bosnian Muslim prisoners from the school in Kula to the Branjevo Military Farm.[4182] On the same day, Beara and Colonel Cerović, the Drina Corps Assistant Commander for Morale, Legal, and Religious Affairs, discussed about "triage" on the phone.[4183] Cerović told Beara that there were "instructions from above" that "triage" needed to be performed on the prisoners, to which Beara responded that he did not want to talk about it over the phone.[4184] The definition of "triage" generally relates to prioritising the treatment of wounded soldiers or other personnel who are in immediate need of care.[4185] Around this time, a large number of Bosnian Muslim prisoners were detained in Kula School and the Pilica Cultural Centre, and were subsequently killed at Branjevo Military Farm and Pilica Culture Centre respectively.[4186] In the context of the ongoing murder operation and in the absence of any evidence of medical triage performed on the prisoners, the Chamber finds that this reference to triage and Beara's reaction to it are consistent with "triage" having been used as a code for killing.

4176 *See supra* paras. 463–464.
4177 *See supra* para. 465.
4178 *See supra* para. 467.
4179 Ex. P00506c; Ex. P02541; Ex. P02542; Richard Butler, T. 16760, 16760–16767 (18 July 2011).
4180 Ex. P00506c; Richard Butler, T. 16772–16773 (18 July 2011).
4181 *See* PW-059, Ex. P01944, PT. 9962 (4 April 2007). At the Standard Barracks, on the evening of 15 July 1995, PW-059 recalled seeing a few people walking around upstairs in the premises of his company and that these people were wearing camouflage uniforms. PW-059, Ex. P01944, PT. 9962 (4 April 2007). PW-059 could only see their backs and when he asked a colleague who they were, one of his colleagues told him that "the commander has a meeting with Popović and Beara". PW-059, Ex. P01944, PT. 9962 (4 April 2007). Based on other corroborative evidence indicating that Beara and Popović were ubiquitous in the detention sites in Zvornik, the Chamber finds that Beara and Popović were present at the Standard Barracks on the evening of 15 July.
4182 Ex. P00846 (confidential), p. 1. *See supra* n. 2156.
4183 Ex. P00845a. *See also* Ex. P00014 (Zvornik Brigade Duty Officer Logbook), p. 146 (the Logbook entry dated 16 July indicates, *inter alia*: "At 1115 hrs. It was reported from *Zlatar* that a triage of wounded and prisoners must be carried out (It was reported to Beara)".
4184 Ex. P00845a.
4185 Richard Butler, T. 16808–16809 (19 July 2011).
4186 *See supra* para. 489. *See also* Richard Butler, T. 16807–16812 (19 July 2011).

1062. Evidence indicates that by 18 July, the rumours of the fate of the Bosnian Muslim males from Srebrenica began to circulate among international community.[4187] In an attempt to conceal what happened to these men, VRS security and intelligence organs of subordinate brigades were tasked to ban access of international and domestic media to RS or control its movement.[4188] The Chamber has no doubt that these measures were part of concealing the large-scale murder operation.

1063. Later in July and early August, more Bosnian Muslims were murdered by Bosnian Serb Forces in other parts of Zvornik,[4189] at Bišina, and a location near Trnovo by the Scorpions Unit, which at the time was operating under the direction of Bosnian Serb Forces.[4190] The operation to murder the Bosnian Muslim prisoners in the Zvornik area was conducted in the presence and with the significant involvement of members of the Zvornik and Bratunac Brigades including their MP,[4191] members of the 10th Sabotage Detachment,[4192] and members of the Zvornik MUP.[4193] The murder operation in the Zvornik area were coordinated and supervised by, *inter alia,* Drago Nikolić, Beara, and Popović.[4194] The evidence leads the Chamber to conclude that the high level of coordination and the involvement of many members of the Bosnian Serb Forces—most notably the security and intelligence officers, including Beara, Popović, and Drago Nikolić—are evidence that the plan to murder was implemented in Zvornik from approximately 14 to 17 July.

4187 Ex. P02223 (ICRC Communication to the Press dated 18 July 1995, which reads in part: "The ICRC is also concerned about the fate of thousands of people whose families, displaced to Tuzla have lost all track of them. It is requesting the highest Bosnian Serb authorities to give it access to all persons captured during the latest events in Srebrenica.").

4188 Ex. P01971 (Drina Corps Command Intelligence and Security Department order to the intelligence and security organs of the subordinate brigades, signed by Popović and dated 18 July 1995, which reads in part: "Over the next few days, we are expecting an invasion of foreign and domestic reporters in the newly liberated area of the VRS [...] We know from previous experiences that most of them are malicious, filing false and tendentious reports from our parts, in fact abusing of our hospitality and introducing themselves as our friends while recording certain footage, and then manipulating it. [...] [The foreign reporters] would be travelling in [certain types of vehicles]. In the event that these vehicle turn up in your zones of responsibility without a permit to move and film, carry out ID checks and arrest them, and notify this department immediately. I hereby draw attention to all which have checkpoints on border crossings with the FRY/Federal Republic of Yugoslavia/—they are to ban all reporters and cameramen from entering the RS/Republika Srpska/ until further notice. I hereby make the Chiefs of the OBP [Intelligence and Security] Organs personally responsible for the execution of both assignments."); Ex. P02571, p. 2 (VRS Main Staff report to Commands of Military Post 7598 Sarajevo, Military Post 7111 Vlasenica, Military Post 7161 Bileća, signed by Miletić and dated 18 July 1995. With regard to the movement of teams of international humanitarian organisations, Miletić stated that "security organs of the 1st Bratunac lpbr [Brigade] must constantly monitor their movement and activities. They must not allow them to go anywhere on their own and must restrict their movement, but be very polite. In other words, the security organs must direct their movement").

4189 The areas include near Nezuk and near Snagovo. *See supra* paras. 520–527, 534–538. Furthermore, there were killings of Bosnian Muslim patients taken form the Milići Hospital and of four Bosnian Muslims who survived the events at Branjevo Military Farm. *See supra* paras. 528–533, 539–541.

4190 *See supra* paras. 546, 551.

4191 *See supra* paras. 409, 411, 414–417, 419, 423, 425, 428, 432, 460, 465, 529, 543–544.

4192 *See supra* paras. 491–500, 542–546.

4193 *See supra* paras. 415, 418, 432, 497.

4194 *See supra* paras. 408–409, 411–412, 417–418, 423, 427, 430–431, 462–467, 470–477, 491, n. 2156.

1064. In addition to the murders, some members of the Bosnian Serb Forces planned and implemented the burial and subsequent reburial of the bodies of thousands of Bosnian Muslim victims from the Bratunac and Zvornik areas.[4195] The Chamber finds that these burials and reburials are evidence of an attempt to hide the murders of the Bosnian Muslim victims. The burials were carried out on a large scale and involved many personnel from entities such as the RAD Utilities Company, the Bratunac Civilian Protection Unit, and the Engineering Company of the Zvornik Brigade.[4196] The burials of Bosnian Muslim victims were organised and supervised by Beara; Popović; Dragan Jokić; Slavko Bogičević, the Deputy Commander of the Zvornik Brigade Engineering Company; and Ostoja Stanišić, Commander of the 6th Battalion of the Zvornik Brigade.[4197]

1065. The Bosnian Serb Forces murdered at least 4,970 Bosnian Muslims after the fall of Srebrenica.[4198]

1066. During September and October 1995, the VRS Main Staff planned and implemented what was intended as a secret operation to disinter and rebury elsewhere the bodies of those killed during the July 1995 murder operation in the Bratunac and Zvornik areas.[4199] The secrecy of the operation could not be maintained because of the scope of people involved from the civilian, military, and police authorities.[4200] This reburial operation was coordinated and overseen by elements of the security organs at all levels of the VRS and included Beara, Popović, Momir Nikolić, and Trbić.[4201]

3. Conclusion

1067. As has been established, several thousands of Bosnian Muslim males were separated, detained, and murdered at numerous sites as detailed above in the areas of Potočari, Bratunac, and Zvornik. Before they were murdered, the Bosnian Muslim men were separated because of their gender and the Bosnian Serb Forces stripped many of them of their personal belongings and destroyed their identification documents. Moreover, the Bosnian Serb Forces did not provide sufficient water, food, or medical attention to the vast majority of Bosnian Muslim prisoners during the significant amount of time they were in Bosnian Serb custody. Furthermore, the prisoners were mistreated, beaten, and in some cases murdered on the spot at various detention sites. This treatment of the prisoners was in conflict with the laws and regulations that the Bosnian Serb Forces

4195 *See supra* paras. 364–372, 433–434, 451–453, 476–477, 501–503.
4196 *See supra*, para. 396, 433–434, 439, 441, 476–477, 482, 501, 563.
4197 *See supra* 364–372, 433–434, 451–453, 476–477, 501–503, 544.
4198 *See supra* para. 721.
4199 *See supra* paras. 372–375, 559–560, 565.
4200 *See supra* para. 560.
4201 *See supra* paras. 372–375, 559–560, 563, 565.

were obligated to follow at the time. The Chamber also notes that there was a concerted effort to keep the prisoners hidden from view, not allowing access by UNPROFOR, for example.

1068. The Chamber notes that it has heard some evidence about a list of alleged war criminals allegedly being used by the Bosnian Serb Forces in Potočari to identify suspected war criminals, in order to detain and interrogate them at the White House, amongst other places.[4202] The Chamber acknowledges the existence of such a list dated 12 July 1995,[4203] and considers that the separation of the able-bodied men with a view to identifying suspected war criminals does not, in and of itself, constitute an illegitimate procedure. However, while it may have been the initial intention of the VRS to separate the men with a view to "screening" them for war criminals, as proposed by Mladić during the third Hotel Fontana meeting, the evidence demonstrates to the Majority that this plan was soon abandoned. The men were separated from their families by virtue of their gender and ethnicity; this group included boys as young as 12 as well as elderly and infirm men; all the men held at the White House were wearing civilian clothes.[4204] The fact that the men were made to leave behind their belongings before entering the White House indicates that there was no intention on the Bosnian Serb Forces' part to identify individuals who had allegedly committed war crimes and to conduct investigations. This, together with the fact that their personal identification documents were subsequently burnt after they had been transported to Bratunac, leads the Majority to find that the purpose of their detention was to ultimately eliminate proof of their existence and thus the list had no legitimate purpose of identifying suspected war criminals amongst the Bosnian Muslim men in Potočari.

1069. Looking at the evidence in its totality, the Majority is satisfied beyond reasonable doubt that, contrary to Mladić's word at the third Hotel Fontana Meeting, there was no real effort on the part of the Bosnian Serb Forces to identify or register the Bosnian Muslim prisoners, whether for exchange, or to identify suspected war criminals. Given the deplorable yet highly organised circumstances surrounding the detention and murder of thousands at the hands of Bosnian Serb Forces over a period of several weeks and over a large geographical area, as well as the highly

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4202 *See* Richard Butler, T. 16636 (14 July 2011) (testifying about a list produced by the Bratunac Brigade Intelligence and Security Organ). Momir Nikolić, Chief of the Security and Intelligence Unit of the Bratunac Brigade, testified that he had a list that had been compiled in 1992 and updated until the fall of the Srebrenica enclave by his security and intelligence organ, containing the names of members of the ABiH who were suspected of committing crimes against Bosnian Serbs. Momir Nikolić, T. 12624–12628, 12680 (12 April 2011). He testified, however, that a different list "turned up" on 12 July with the heading of the Bratunac Brigade, adding that this list did not have a stamp or signature. He never saw this list and did not know who drafted it, but testified that this was not the same list as the one he had in his office. Momir Nikolić, T. 12628 (12 April 2011). Rutten testified that while he knew of the existence of a list, there was clearly no apparent connection between this list and the selection of men taken to the White House for interrogation. Johannes Rutten, Ex. P02629, PT. 4898–4899 (30 November 2006).

4203 *See* Ex. P01098.

4204 Evert Rave, Ex. P01004, KT. 932 (21 March 2000); Johannes Rutten, T. 17865, 17868 (12 September 2011); PW-011, Ex. P01512 (confidential), PT. 3613, 3642 (private session) (6 November 2006).

organised actions taken with respect to burial and reburial of the victims, the only reasonable conclusion the Chamber can reach is that there was a common plan to murder the Bosnian Muslim males from Srebrenica on a widespread and systematic scale followed by a plan to cover up these crimes.

1070. Furthermore, the evidence demonstrates beyond reasonable doubt that the military chain of command and its necessary modes of communication were fully functioning within the VRS, especially at the level of the Main Staff, at the time of the detentions, murders, and reburials. The Majority finds that there is overwhelming of a highly organised murder operation developed and shared among and between numerous high-ranking VRS officers and implemented by countless members of the Bosnian Serb Forces. Without such sophisticated coordination and organisation, it would have been impossible for the Bosnian Serb Forces to murder, bury, and rebury thousands of Bosnian Muslim victims in such a short time and over such a large area.

1071. On the basis of all the evidence before it, the Majority is satisfied beyond reasonable doubt that by the morning of 12 July, a common plan existed among some members of the leadership of the Bosnian Serb Forces to murder the able-bodied men from the Srebrenica enclave. The Majority, Judge Nyambe dissenting, is convinced that this plan was carried out by a plurality of persons, including numerous high-ranking VRS officers and their subordinates, and members of the Bosnian Serb MUP.

1072. The participation of the Accused in this plan, and the extent to which he contributed to it, will be discussed separately.

E. Participation of the Accused in the JCE to Forcibly Remove

1. Submissions of the Parties

1073. The Indictment alleges that the Accused was a member and knowing participant of the JCE to forcibly remove the Bosnian Muslim population from the enclaves of Srebrenica and Žepa.[4205] It is alleged that through and by his actions set out in paragraph 60(a)–(d) of the Indictment, he contributed to this JCE.[4206] According to the Prosecution, from around 8 March 1995 when Directive 7 was issued, the Accused shared in the common plan to remove this population,

[4205] Indictment, para. 35.

[4206] Paragraph 60 of the Indictment alleges that the Accused contributed to the JCE to Forcibly Remove by "making life unbearable for the inhabitants of Žepa enclave" (para. 60(a)); "defeating the Muslim forces militarily" (para. 60(b)); "disabling the local UN forces military, including preventing and controlling outside international protection of the enclaves, including air strikes and international monitoring" (para. 60(c)); and "controlling the movement of the Muslim population out of the enclaves" (para. 60(d)). Further details of each main contribution

personally participating in and contributing to this goal, as well as using his subordinates as "tools" to effectuate the implementation of the plan.[4207]

1074. In support of its position that the Accused significantly contributed to the JCE to Forcibly Remove, the Prosecution submits that the Accused restricted UNPROFOR and humanitarian aid convoys from the issuance of Directive 7 in March 1995 until the attacks on the enclaves in July;[4208] provided intelligence and security support to the VRS, which was of great importance in planning and implementing the forcible removal operations from both enclaves;[4209] passed on Mladić's order for the 10th Sabotage Detachment's 23 June 1995 "tunnel attack" on Srebrenica in an effort to make life for the inhabitants of the enclave unbearable;[4210] participated in co-ordinating, overseeing and supporting the attack on Srebrenica by passing orders to his subordinates—his eyes and ears on the ground—and providing information to his superiors;[4211] sought to manipulate and control UNPROFOR's actions in both enclaves;[4212] and supervised, directed, and controlled his subordinates as they managed the forcible removal from Potočari on 12–13 July, being "exclusively responsible" for their work.[4213] In addition, with regard to Žepa specifically, he made an illegal ultimatum to the Žepa Muslims to leave or face military action;[4214] proposed to shell groups of fleeing refugees, including civilians, and to use tear gas and aerosol bombs against the Bosnian Muslim soldiers of Žepa;[4215] and finally, was in charge of the forcible removal operation and remained in the area until the entire population had been removed.[4216]

1075. The Accused challenges the allegation that he bears criminal responsibility for the alleged forcible removal operations.[4217] With respect to the drafting of Directive 7, he submits that he played the role that assistant commanders in all armies would play; his sector's contribution was limited to security and intelligence related matters and not to the formulation of the tasks to the

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are included in the text of these subparagraphs. *See also* Prosecution Final Brief, paras. 886–896; Prosecution Closing Argument, T. 19414, 19434–19435 (21 August 2012).

4207 Prosecution Final Brief, paras. 876, 879; Prosecution Closing Argument, 19434–19435 (21 August 2011). *See also* Prosecution Closing Argument, T. 19414 (21 August 2012) (submitting that while the Indictment alleges that the JCE to Forcibly Remove started in 1995 the underlying policy began with the implementation of the Six Strategic Objectives, which set out the goal to establish a Serbian State discussed at the 16th RS Assembly session, and later implemented in the directives).

4208 Prosecution Final Brief, paras. 887–888. Prosecution Closing Argument, T. 19429–19431 (21 August 2012).

4209 Prosecution Final Brief, para. 889.

4210 Prosecution Final Brief, paras. 237, 890, 898; Prosecution Closing Argument, T. 19428–19429 (21 August 2012).

4211 Prosecution Final Brief, paras. 891–892, 898.

4212 Prosecution Final Brief, paras. 893, 896; Prosecution Closing Argument, T. 19431-19433 (21 August 2012).

4213 Prosecution Final Brief, para. 894; Prosecution Closing Argument, T. 19432 (21 August 2012).

4214 Prosecution Final Brief, paras. 895, 899; Prosecution Closing Argument, T. 19425–19426, 19432 (21 August 2012).

4215 Prosecution Final Brief, paras. 895, 899; Prosecution Closing Argument, T. 19433–19434 (21 August 2012).

4216 Prosecution Final Brief, paras. 895, 898.

4217 Accused Closing Argument, T. 19466 (22 August 2012). The Accused's specific submissions concerning the existence of the JCE are addressed elsewhere in this Judgement. *See supra* Chapter VIII. C.

corps, and the wording to which he contributed contains nothing illegal.[4218] It is the position of the Accused, further, that there is no evidence he participated in the restrictions of humanitarian aid convoys entering the enclaves.[4219] He submits, in this respect, that he did not have authority to approve or deny the movement of UNPROFOR's re-supply convoys, but merely provided his opinion on such restrictions by virtue of his membership in the Joint Central Commission.[4220] With regard to the alleged engagement of the 10th Sabotage Detachment in the 23–24 June 1995 "tunnel attack", the Accused submits that this incident was not charged in the Indictment, that he was not in a position to issue orders to this unit, and there is no proof that he approved the operation.[4221] Finally, the Accused avers he did not take part in the "evacuation" of Srebrenica's Bosnian Muslim population, submitting that he was not present in the enclave, did not order or issue any orders in the course of combat, and did not make the decision to "evacuate".[4222]

2. Findings

1076. It must be noted, at the outset, that Judge Nyambe has dissented to the Majority's finding of forcible transfer of the Bosnian Muslim populations from Srebrenica and Žepa, and, thereby, to the existence of the JCE to Forcibly Remove. The findings made below, other than those which do not conflict with her dissent, are those of the Majority. The question before the Majority, taking 8 March 1995 as a starting point, is whether the Accused can be found to have significantly contributed to the JCE to Forcibly Remove, and, thereby, be held responsible as a member of the JCE for the forcible removal of the Bosnian Muslim population from Srebrenica and Žepa. The Majority's conclusions in this regard are set out below. They are based on the findings of actions of the Accused set out in earlier sections of this Judgement, most relevantly, Section VIII(B), regarding the Role of the Accused, but also on its findings on the events in Srebrenica and Žepa, set out in Chapter IV–VI, and, to an extent, the Majority's legal findings on forcible transfer, contained in Chapter VII.

4218 Accused Closing Argument, T. 19466–19467 (22 August 2012); Accused Final Brief, paras. 381–382. The Accused submits that his sector's contributions were limited to the wording of Items 1 and 2 of Directive 7, regarding the characteristics of the international military and political situation and the "Croat-Muslim armed forces". Accused Final Brief, para. 382.

4219 Accused Closing Argument, T. 19469–19474, T. 19478 (22 August 2012). The Accused argues, in this regard, that humanitarian aid that was intended for the civilians in the enclaves were being placed at the disposal of the ABiH and that under those circumstances, the RS was entitled to place restrictions on the "use of humanitarian aid", which it did not in fact do. Accused Closing Argument, T. 19477–19478 (22 August 2012).

4220 Accused Closing Argument, T. 19481–19482 (22 August 2012).

4221 Accused Closing Argument, T. 19485–19488 (22 August 2012). *See also* Accused Final Brief, paras. 441–448 (concerning his authority vis-à-vis this unit, in relation to the Branjevo Military Farm and Bišina murder incidents).

4222 Accused Closing Argument, T. 19508, 19512–19514 (22 August 2012). The Accused's specific arguments concerning whether or not the transfer of the populations refers to forcible removal are addressed in the Majority's legal findings on forcible transfer as well as the Majority's findings regarding the JCE to Forcibly Remove. *See supra* Chapter VII. F., VIII. C.

(a) Policy of Ethnic Separation Culminating in Issuance of Directive 7

1077. While the start of the JCE was marked by the issuance of Directive 7 in early March 1995, the Majority has found that a policy to rid the eastern enclaves of its Bosnian Muslim population had been set in place as early as 1992.[4223] The Accused was present when the Six Strategic Objectives of the RS were discussed at the 16th Session of the National Assembly on 12 May 1992, calling for the ethnic separation of Serbs and Muslims.[4224] He was a member of the Main Staff in November of 1992 when Mladić issued Operational Directive 4, calling for the infliction on the "heaviest possible losses" on the enemy, forcing them to "leave the Birač, Žepa and Goražde areas together with the Muslim population";[4225] this area included all three of the eastern enclaves.[4226] The wording of Directive 4 clearly demonstrates that the aim was to force not only the ABiH out of the enclaves, but also their respective civilian populations.[4227] The Majority recalls, in this regard, the testimony of Milenko Lazić when questioned about the wording of Operational Directive 4, that the goal of separation on ethnic principles was the understanding of "every individual member of the VRS".[4228]

1078. The Majority has already determined that the issuance of Directive 7 marked the start of the development and implementation by Bosnian Serb Forces of a JCE to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa.[4229] The Accused's sector contributed to the drafting of Directive 7,[4230] and the Majority finds, moreover, that even if it accepts he did not take part in the drafting of the tasks assigned to the Drina Corps which contained part of the language on which the Prosecution relies as the basis for the JCE to Forcibly Remove,[4231] he received the entirety of the text upon the issuance of the Directive.[4232] While the contributions of the Accused's sector to the security and intelligence related items that made it into the Directive do not in and of itself serve as proof of intent on his behalf to forcibly remove the Bosnian Muslim population from the enclaves,

4223 *See supra* para. 1010.
4224 *See supra* para. 162.
4225 *See supra* paras. 164, 913.
4226 Richard Butler, T. 16457 (11 July 2011) (stating that this covered the lower Podrinje area); Ex. P02495, p. 3. The lower Podrinje area encompassed the area from Srebrenica to Zvornik. Richard Butler, T. 16304 (8 July 2011), T. 16456 (11 July 2011).
4227 *See* Richard Butler, T. 16457–16458 (11 July 2011).
4228 Milenko Lazić, Ex. P02733, T. 21835 (5 June 2008).
4229 *See supra* paras. 1010–1012.
4230 *See supra* para. 186, n. 677. *See also* para. 922.
4231 The Majority notes that the language of Directive 7 which forms the basis of the Prosecution's allegations is not limited to the tasks set out for the Drina Corps (Ex. P01214, p. 10) but also to the goal of "squeezing" the enclaves as set out under the heading "Support for Combat Operations" of the Directive (Ex. P01214, p. 14), as discussed by the Majority in the section of the JCE to Forcibly Remove).
4232 *See* Ljubomir Obradović, T. 12047–12048 (30 March 2011); Milomir Savčić, T. 15970 (23 June 2011).

the Majority finds that by this time, the Accused was aware that politically and militarily, there was an aim to create conditions seeking to rid the eastern enclaves of its Bosnian Muslim population.[4233]

(b) Restrictions of UNPROFOR Re-supply and Humanitarian Aid Convoys

1079. The Accused submits that the Prosecution's allegation that restrictions against UNPROFOR re-supply convoys into the enclaves were a means to create unbearable conditions for the civilian populations is "completely unfounded", arguing that "UNPROFOR convoys had nothing to do with the position of the civilian population" in the enclaves.[4234] The Majority recalls its finding, however, that UNPROFOR units had been sent to, *inter alia,* deter hostile action by the warring parties through their presence and to facilitate and assist with the distribution of humanitarian aid.[4235] The restrictions of re-supply convoys directly impacted UNPROFOR's ability to carry out its mandate, and as such, contributed to the creation of unbearable conditions within the enclaves.[4236] The Majority has already found that the Accused was closely involved in the process of approving or rejecting UNPROFOR re-supply convoys into the enclaves;[4237] he was consulted whenever UNPROFOR submitted a convoy request and was considered the Main Staff's liaison with UNPROFOR.[4238] Moreover, security organs under the Accused's professional control actively engaged in the system of restrictions placed on humanitarian convoys entering the enclaves.[4239] These restrictions had the intended result of "squeezing" the enclaves to the point where living within them became unbearable.

(c) Military Activities Aimed at Terrorising the Civilian Population in Srebrenica

1080. As discussed in more detail elsewhere in this Judgement and summarised in the Majority's findings on the JCE to Forcibly Remove, starting in late May through to July 1995, the VRS increased its military activities against Srebrenica enclave, including the shelling and sniping of civilian targets.[4240]

4233 *See* Ljubomir Obradović, T. 12047–12048 (30 March 2011).
4234 Accused Closing Argument, T. 19484 (22 August 2012).
4235 *See supra* para. 166.
4236 *See supra* paras. 196–204, 1015.
4237 *See supra* paras. 920, 922.
4238 *See supra* paras. 194, 922.
4239 *See supra* paras. 195–196. The degree of control of the security organs in this regard is exemplified by a handwritten note by Chief of Intelligence and Security of the Bratunac Brigade Momir Nikolić on a Main Staff document dated 2 April 1995, stating that "[n]ot a single convoy, or ICRC team, or MSF may enter Srebrenica without my permission and presence." Momir Nikolić, T. 12332–12333 (5 April 2011); Ex. P02162, p. 1. *See also* Momir Nikolić, T. 12336 (5 April 2011); Ex. P02164, p. 1 (a document from the Main Staff dated 15 June 1995 on which Momir Nikolić wrote that security officers must witness detailed controls, meaning that an officer from the security organ was required to be present at every inspection).
4240 *See supra* para. 1016.

1081. One of the incidents highlighted in the Majority's findings on the JCE to Forcibly Remove concerned an attack that took place in the night of 23–24 June 1995, during which the Main Staff's 10th Sabotage Detachment, assisted by a unit of the Bratunac Brigade, entered Srebrenica enclave through a mine tunnel.[4241] The attack wounded several Bosnian Muslims and killed one woman.[4242] The Majority concluded that the attack had the dual function of warning the ABiH of the VRS's capabilities to carry out attacks inside the enclave, as well as terrorising the civilian population in line with the goal of making life inside the enclave unbearable.[4243]

1082. Both parties presented extensive evidence on this specific incident, referred to as "the tunnel attack" throughout the trial. The Majority notes the Prosecution's submission that the Accused passed on Mladić's order regarding the use of the 10th Sabotage Detachment for this attack, to Salapura.[4244] Salapura gave extensive evidence on this incident. His testimony concerning whether or not the Accused was present at the planning stage of the operation and would have been involved in it, however, is evasive and unclear.[4245] The basis of his position that the Accused was not "present" when this attack was approved, moreover, is without foundation.[4246] It is apparent to the Majority that Salapura aimed to minimise the Accused's role in the planning and ordering stage of this specific operation.[4247]

1083. Regardless of the extent of his involvement in the planning of the attack, the Majority finds, on the basis of the totality of the evidence and taking into account the Accused's position as Chief of the Sector of Security and Intelligence and Mladić's most trusted confidante, that the Accused's role in this incident is not as passive as Salapura's testimony would suggest. The Majority is not, however, in a position to make a conclusive finding as to the extent of the Accused's role in approving or passing on to Salapura the order to carry out the attack. The Majority notes that Salapura conceded, in any event, that he would have reported to the Accused following completion of the "mission", since he reported to the Accused about all the operations of the 10th Sabotage Detachment that he proposed and monitored.[4248] For the purpose of establishing whether by this act,

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4241 *See supra* paras. 211, 924, 1017–1021.
4242 *See supra* para. 211.
4243 *See supra* para. 1021.
4244 *See supra* para. 1074.
4245 *See* Petar Salapura, T. 13526–13528, 13537–13538 (2 May 2011), T. 13661–13667 (4 May 2011).
4246 Petar Salapura, T. 13527 (2 May 2011). Salapura bases his suggestion that the Accused "was not present" on the fact that had he been, it would have been the Accused who would have passed on Mladić's order to Salapura, and not Mladić himself. *Ibid.* Being pressed on the basis of his assertion that the Accused was "absent", Salapura conceded "[w]ell, he may have been [present] or not. He could have conveyed the order to me orally, or it could have been given to me by [Mladić] directly. I don't know what happened." Petar Salapura, T. 13537–13538 (2 May 2011). The evidence demonstrates, however, that on 23 June 1995, the Accused was together with Mladić and Škrbić attending a meeting with Karadžić at a short distance away in Pale. *See* Ex. P01407, p. 194 (Mladić's diary); Ex. P02198, p. 69 (Karadžić's diary).
4247 *See* Petar Salapura, T. 13517–13518, 13524–13527 (2 May 2011), T. 13661–13667 (4 May 2011).
4248 Petar Salapura, T. 13527–13528 (2 May 2011).

the Accused, together with other members of the JCE, furthered the JCE to Forcibly Remove, the Majority considers that it suffices to conclude that the Accused knew that this attack was carried out by the 10th Sabotage Detachment, and of the fact that it resulted in the wounding of civilians and civilian casualties.[4249] The Majority finds in this context, that the Accused's reference in a daily intelligence report issued on 25 June—in which he stated that the ABiH was spreading disinformation about such an attack taking place with the intention to cause condemnation by the international community[4250]—was made with full awareness that this attack had taken place and had resulted in civilian casualties.[4251]

(d) Disabling of UNPROFOR and Enabling the Takeover of Srebrenica

1084. The Majority finds, further, that the Accused actively contributed to the aim of limiting UNPROFOR's ability to carry out its mandate. His attitude towards the UN generally is demonstrated by his proposal that UN forces that had been taken hostage by the VRS following NATO air-strikes at the end of May 1995 be "placed in an area of possible NATO air-strike".[4252] In the days immediately leading up to the attack on Srebrenica enclave—as demonstrated by a series of communications between the Accused with Nicolai and Janvier—he kept UNPROFOR at bay by denying VRS intentions, stalling communication on UNPROFOR's concerns regarding VRS military activities, and deflecting attention to the ABiH.[4253] On 9 July 1995, after being repeatedly confronted by UNPROFOR concerning VRS activities towards the enclave, he made false claims that the VRS would attempt to "calm down the situation" and "find a reasonable solution" just before forwarding Karadžić's message of agreement to continue operations with a view to capturing Srebrenica.[4254] On the evening of the next day, 10 July, just before the fall of the enclave, he told Janvier that he had relayed UNPROFOR's concerns to Mladić, who in turn had "exerted" his influence to calm down the situation.[4255] That same day, Mladić issued an order referring to the

[4249] Paragraph 60 of the Indictment sets out the specific acts the Accused is alleged to have committed "individually or in concert with other members of the JCE" in furtherance of the JCE to Forcibly Remove, and refers back to, *inter alia*, paragraph 38 of the Indictment. Paragraph 38 of the Indictment alleges that from March 1995 through to the end of July 1995, the VRS shelled and sniped various civilian targets in the enclaves as part of the effort to make life for the inhabitants unbearable, and the Majority has already found that this covers the attack on the 23–24 June 1995. *See supra* paras. 1017–1021.

[4250] *See* Ex. P02512, p. 4. *See supra* para. 924.

[4251] *See* Richard Butler, T. 16546–16547 (12 July 2011). Having found that the Accused knew about the intended attack as well as of the outcome having been reported to him by Salapura, the Majority accepts Butler's testimony that the Accused's reference to "disinformation" spread by the ABiH about a VRS sabotage attack on civilian features was, in turn, disinformation itself. Butler testified that the Accused's disinformation was intended to influence the opinions of those receiving his reports, which included the Main Staff but also the civilian government, the Ministry of the Interior, the Corps Commanders, and even the Security Administration of the federal army in Belgrade. Richard Butler, T. 16544–16546 (12 July 2011).

[4252] *See supra* para. 923.

[4253] *See supra* paras. 925–930.

[4254] *See supra* para. 929.

[4255] *See supra* para. 930.

VRS success in Srebrenica and suggesting to take advantage of this success to improve the "tactical situation of our forces in the area of [Žepa] enclave".[4256]

1085. The Accused pointed out several times in this trial that the document by which he forwarded Karadžić's agreement to capture Srebrenica town also contains an order that full protection be ensured to UNPROFOR and the Bosnian Muslim civilian population, emphasising that the civilian population should be treated in accordance with the Geneva Conventions.[4257] In his Closing Argument, the Accused relies on this particular passage in support of his position that he "cannot be attributed the intent necessary for an attack on the civilian population".[4258] The Majority notes, first and foremost, that this instruction to Krstić was merely relayed by the Accused from Karadžić.[4259] Second, on the same day this message was forwarded, several of UNPROFOR's OPs had already been attacked by the VRS, and the entire enclave of Srebrenica was surrounded by VRS forces, with the VRS attack on the enclave starting in earnest.[4260] In the days after, the VRS shelled the DutchBat Bravo Company in Srebrenica, where Bosnian Muslim civilians had taken shelter. On 10 and 11 July, it shelled both sides of the road along which the column of Bosnian Muslim civilians was heading to the UN compound to seek shelter, as well as shelling Potočari itself, causing casualties among those who had taken refuge there.[4261] The Majority finds that contrary to the Accused's position on this point, Karadžić's instruction to ensure the protection of the civilian population has no bearing upon the state of mind of the Accused.[4262]

1086. Following the takeover of the enclave on 11 July, the Accused continued to play an active part, dispersing relevant intelligence and security related information with a view to ensuring the VRS maintained its control over the enclave.[4263]

(e) Knowledge of Forcible Removal and Coordinating Activities of Subordinates in Potočari

1087. By the night of 11 July, the Accused was informed that thousands of Bosnian Muslim civilians had started to gather in Potočari,[4264] and by 12 July, he was informed of the approximately

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4256 Ex. P02517, p. 1.
4257 Ex. D00041. *See supra* para. 934.
4258 Accused Closing Argument, T. 19497 (22 August 2012).
4259 Ex. D00041. *See also* Richard Butler, T. 16581–16582 (13 July 2011).
4260 *See supra* para. 220 *et eq.*
4261 *See supra* paras. 230, 233, 235.
4262 *See* Cornelis Nicolai, T. 3956–3957 (13 July 2010). *See also* Cornelis Nicolai, Ex. P00674, PT. 18567–18568 (30 November 2007).
4263 *See supra* paras. 932–933.
4264 Ex. P02518 (a telegram sent by Popović in the late afternoon of 11 July 1995, to the Drina Corps IKM, to the Main Staff and to the Accused personally). The plain text of the telegram would suggest that Popović is referring to a column of Bosnian Muslim civilians moving from Potočari towards Žuti Most (the Yellow Bridge), which is in the direction of Bratunac. Testifying about this document, Butler explains that Popović had to be referring to the movement of the Bosnian Muslim civilians observed near Potočari moving in the direction of the UN compound, which was situated on the outskirts of Potočari. In the context of the situation on the ground at the time, the

25,000–30,000 Bosnian Muslim civilians that had sought refuge at the UN compound,[4265] as well as of the fact that men were being separated.[4266] His subordinate Radoslav Janković, an officer of the Main Staff's Intelligence Administration, attended both meetings at the Hotel Fontana on the night of 11 July and in the morning of 12 July; the Majority has no doubt that the Accused was informed of discussions held at these meetings.[4267] Radoslav Janković, moreover, was involved in the separation process, giving orders to subordinates to ensure that the forcible removal operation was being carried out efficiently.[4268] Janković had neither the motive nor the authority to give such orders on his own accord. Significantly, only a number of days later, the Accused ordered Janković to supervise the evacuation—carried out by the ICRC—of the wounded Bosnian Muslims from the Bratunac Hospital.[4269] Radoslav Janković implemented this order.[4270] It was Janković who presented Franken with a disingenuous declaration at the UN compound on 17 July which sought to legitimize the forcible removal of the Bosnian Muslims gathered at Potočari.[4271] The following day, Janković sought guidance from the Accused concerning the evacuation of MSF personnel.[4272] The Accused's authority and involvement in the evacuation process cannot be viewed in a vacuum. While he may not have been physically present in Potočari on 12 and 13 July, the Majority finds he was informed of the events on the ground by Radoslav Janković, and through the involvement of subordinate officers of the security and intelligence organs at brigade and corps level including Popović, Keserović, and Momir Nikolić.

(f) Involvement in Žepa Takeover and Forcible Removal

1088. The Accused's role in the events in Žepa was clearly more on the forefront.[4273] On 13 July, the second and last day of the forcible removal operation of Bosnian Muslims from Potočari, a

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Majority agrees that this can be the only interpretation of this evidence. Any other interpretation would suggest that Bosnian Muslim civilians, fleeing from the VRS attacks on Srebrenica, would be making their way to RS held territory in Bratunac. Moreover, a report issued by Popović on the afternoon of the next day makes it clear that he was referring to the civilians moving to the UN compound. *See* Ex. P02518; Richard Butler, T. 16603 (13 July 2011); Ex. P02069, p. 2.

4265 Ex. P02203, p. 2 (a report authored by the Accused himself); Ex. P02069, p. 2. *See also supra* para. 932.

4266 Ex. P02069, p. 2 (report sent by Popović in the late afternoon of 12 July to the Main Staff and Sector for Intelligence and Security Affairs, amongst others, detailing that "[w]e are separating men from 17-60 years of age and we are not transporting them", adding that "the security organs and the DB /the state security/ are working with them."). *See also* Richard Butler, T. 16379–16380 (8 July 2011) (regarding the Accused's knowledge of men being separated at the time he wrote Ex. D00064, his instruction to, *inter alia,* note down the names of all men fit for military service).

4267 *See supra* paras. 92–98. In addition to the evidence of the efficient reporting system, the issue of tens of thousands Bosnian Muslim civilians gathering at a UN compound in Potočari no doubt was of relevance to the Accused's sector; the Majority has no doubt that as head of sector, he was aware of what was going on at the UN compound. *See also supra* para. 915.

4268 *See supra* paras. 275, 278.

4269 *See supra* para. 958.

4270 *See supra* paras. 302, 964.

4271 *See supra* paras. 302–303.

4272 *See supra* para. 964.

4273 *See supra* Chapter VI.

meeting was held at Bokšanica where the Accused told those present, at the outset, that "Srebrenica has fallen and now it is Žepa's turn",[4274] adding that the only alternative to Žepa's "evacuation" was military force against the enclave.[4275] The Bosnian Muslim representatives told the Accused they were not authorised to make any decisions on the spot.[4276] In a report issued by the Accused that same evening, he suggested to, amongst others, Mladić personally that "some of the free forces of the Srebrenica front should be engaged in the attack on Žepa from the direction of Radava [...] in order to capture Žepa within 21 hours in order to avoid the condemnation and reaction by the international community".[4277] The Accused expressed his belief, moreover, that it would be possible to capture Žepa within this short time frame, given that "[o]ur past activities have completely disorganised their system and civilians have already started gathering around UNPROFOR checkpoints and bases".[4278] Per telegram in the morning of 14 July, the Accused then proposed to "commence combat operations as per plan of the Superior Command", reporting that "UNPROFOR's OP 2 had been put under VRS control with the aim of [controlling] the work and the reports that UNPROFOR is making to their superior command".[4279] The VRS's attack on the enclave, as proposed by the Accused, commenced on 14 July, targeting the centre of Žepa and its surrounding villages.[4280]

1089. On the basis of a series of documents issued by the Accused on 14 July alone,[4281] the Majority is satisfied that he actively contributed to the efficiency of the VRS takeover of the enclave, including—as had been his contribution in Srebrenica—through ensuring UNPROFOR's inability to intervene, so that the operation could continue unobstructed.[4282] His proposal to capture Žepa within 21 hours so as to avoid condemnation and reaction from the international community, moreover, demonstrates to the Majority that he was well aware there was nothing legitimate about Žepa's takeover. Moreover, on the basis of his close involvement in these events—in particular his suggestion to Mladić on the night of 13 July to "capture" Žepa, and his proposal on 14 July to start "combat operations"—shelling on Žepa resumed on that day. The VRS shelled surrounding villages as well as the centre of Žepa, no doubt instilling fear in the population which by that time, as

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4274 *See supra* para. 607.
4275 *See supra* para. 609.
4276 Hamdija Torlak, T. 4294 (23 August 2010). *See also supra* paras. 608–610.
4277 Ex. P00145, p. 2. *See supra* paras. 611, 950. The Majority notes that on the evening before, a meeting was held at the Bratunac Brigade Headquarters where Mladić assigned Krstić to lead the operation against Žepa and ordering that the same troops that had been engaged in Srebrenica should be used to carry it out. *See supra* para. 1030. The Accused's words in this respect, are significant in that they demonstrate that he was an active participant in the operations, in this case, making suggestions that are in direct line with Mladić's orders immediately prior.
4278 Ex. P00145, p. 2. *See supra* para. 950.
4279 *See supra* para. 953.
4280 *See supra* Chapter VI. A. 4.
4281 *See supra* paras. 953–955.
4282 *See supra* para. 953.

already reported by the Accused, had started to gather around UNPROFOR checkpoints and bases seeking protection.

1090. Following the attack on Žepa enclave and before its fall around 24 July 1995, the Accused, actively participated in further "negotiations",[4283] well aware of the fact that members of the War Presidency of Žepa were not authorised to deal with any issues related to the ABiH.[4284] On 20 July, loudspeakers were used by the VRS to psychologically pressure the Bosnian Muslim population to return to the enclave to be evacuated; a loudspeaker van was delivered to VRS forces upon order of the Accused some days earlier.[4285] In the midst of resumed and intensified VRS shelling which was as a result of further failed negotiations concerning the surrender of able-bodied men, the Accused, on 21 July 1995, sent a report to General Radivoje Miletić, Chief of Operations of the Main Staff, including, in the Chamber's view, a lawful proposal to destroy "enemy forces"—the ABiH—on the Brezovan Ravan and Purtići axes, for which he suggested the use of chemical agents, expressing his view that this would accelerate the fall of Žepa "and the surrender of Muslims".[4286] He ends his list of proposals in this regard by expressing his belief that "[w]e could force Muslims to surrender sooner if we destroyed groups of Muslim refugees fleeing from the direction of Stublić, Radava and Brloška Planina".[4287]

1091. In the view of the Majority, it is in the context of the aim of accelerating the "surrender of Muslims" that his ultimate proposal regarding the destruction of "groups of Muslim refugees" must be considered; persistent attempts by the VRS to force the ABiH to surrender their weapons from the start of the "negotiations" earlier in July had not been successful.[4288] This document must be viewed in the context of the events on the ground at the time. It is clear from the document read in its entirety, that targeting civilians was a last resort method, but not one the Accused was unwilling to turn to, should all else fail—and all else did. By 14 July, the Accused had knowledge of the Bosnian Muslim population of Žepa taking shelter outside of inhabited areas.[4289] Regardless of whether the term "zbjeg" in BCS refers to a place of refuge as argued by the Accused or, as it appears on the face of the official CLSS translation of this document—and according to the interpretation of Obradović and Savčić—to "groups of Muslim refugees",[4290] the Majority finds

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4283 *See supra* para. 629.
4284 *See supra* para. 1034.
4285 *See supra* para. 956.
4286 Ex. P00488.
4287 Ex. P00488. *See supra* paras. 626, 973.
4288 *See supra* Chapter VI. A. 3.
4289 *See* Ex. P00124, p. 1 (in which the Accused, reporting on the situation in Žepa, states that "[a]ccording to UNPROFOR intelligence the Muslim troops are at the front line and the population took a refuge outside the inhabited place. They are probably excepting our combat activities"). *See supra* para. 953.
4290 *See supra* para. 974. *See* Ljubomir Obradović, T. 12060–12061 (30 March 2011) (who, reading the passage in the original Serbian, explained that the reference is to fleeing civilian groups); Milomir Savčić, Ex. P02418,

that the intended victims included Bosnian Muslim civilians, a violation of international humanitarian law. This document is relevant not only to establish the Accused's state of mind days before he was actively engaged in carrying out the forcible removal operation of Žepa's population as discussed further below, but also demonstrates his full knowledge of the predicament of this vulnerable population, which, as reflected in his own words, were already fleeing Žepa towards other areas, no doubt as a result of the VRS shelling that had resumed the previous day.[4291]

1092. On the evening of 24 July, Mladić put the Accused in charge of the operation to remove the Bosnian Muslim population from Žepa, which was set to begin the next morning.[4292] The Accused immediately proceeded to carry out a number of activities in preparation for the start of the operation,[4293] including the provision of sufficient fuel to ensure the removal could proceed "undisturbed".[4294] Next to Mladić, he was the most senior VRS officer present during the forcible removal of Žepa's population and was clearly in charge. He directed members of the Bosnian Serb Forces, including Pećanac, while they boarded Bosnian Muslim civilians onto buses. He contributed to the threatening atmosphere during this process by pointing a pistol up at the sky, intended to frighten the Bosnian Muslims civilians.[4295] He personally escorted the last convoy heading out of Žepa on the evening of 25 July.[4296] On 27 July, he was present in Luke near Tišća and actively engaged in the removal of 12 lightly wounded men whom he had allowed to enter a bus in Žepa earlier that day; the men were taken out of the bus and driven to Rasadnik prison near Rogatica.[4297] His subsequent dealings with these prisoners and conversations with UNPROFOR personnel regarding their fate[4298] demonstrate his close involvement in, and his degree of control over, the implementation of the forcible removal operation. The Majority's findings on the Accused's interactions with Palić, Imamović and Hajrić on these days and following the completion of the forcible removal operation, will be set out in the section regarding his responsibility for their killings pursuant to the third form of JCE liability.[4299] The Accused's continued involvement in prisoner related matters in the month of August and thereafter[4300] demonstrates to the Majority his

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PT. 15373 (13 September 2007) (acknowledging, by his response to this passage, that the reference is to civilians fleeing).

4291 Ex. P00488 (1. "Muslims are organizing defense along the Brezova Ravan and Puretići axes. They are using bullet- proof vests and combat-equipment from UNPROFOR. They are evacuating population from Žepa and surrounding villages towards Zlovrh, Stublić and Sjemač.").

4292 *See supra* paras. 977–978.

4293 *See supra* paras. 979–981.

4294 *See, e.g.*, Ex. P00568a. *See supra* para. 640.

4295 *See supra* paras. 758, 982.

4296 *See supra* paras. 646, 985.

4297 *See supra* paras. 659, 987, 989.

4298 *See supra* paras. 991–992.

4299 *See supra* Chapter VIII. G.

4300 *See supra* paras. 1002–1006.

dedication to the follow up of the forcible removal operation; he did not undertake these actions in a vacuum.

3. Conclusion

1093. By virtue of his capacity as Assistant Commander and Chief of the Sector for Intelligence and Security of the Main Staff, and against the backdrop of his close relationship with Mladić, the Accused was a coordinating and directing factor—and indeed, a vital link—in the events leading up to the VRS takeover of both enclaves, and the removal of their respective populations. By March of 1995 through to the fall of the enclaves, the Accused participated in the restrictions of convoys entering the enclaves. In the lead up to the attacks on the enclaves, he actively contributed to the aim of limiting UNPROFOR's ability to carry out its mandate. He facilitated the VRS's takeover of the enclaves by keeping UNPROFOR at bay and making false claims concerning VRS intentions. On the eve of a further advance on Srebrenica, he passed on Karadžić's instruction to take over the town of Srebrenica. Through the presence on the ground of his subordinates in the professional chain of command, he was aware of the forcible removal of the approximately 25,000–30,000 Bosnian Muslims gathered at Potočari to ABiH held territory on 12–13 July 1995. The Majority has no doubt that he shared the intent with other members of the JCE to effectuate this forcible removal.

1094. The Majority's finding of the Accused's shared intent is reaffirmed by his continued participation in the JCE by way of his direct and active involvement in the preparation and implementation of the forcible removal of Žepa's civilian population at the end of July. He was a central participant in the "negotiations" held on 13 July concerning the fate of Žepa's population. It was the Accused who proposed the quick takeover of Žepa so as to avoid the condemnation and reaction of the international community. He was in charge of the removal of Žepa's civilian population, a task he diligently carried out, directing forces on the ground, seen pointing his pistol up at the sky in a demonstration of power. The Accused's contributions highlighted above were significant. Taking into consideration his knowledge and his continued participation in the JCE throughout its duration from March 1995 to August 1995, the Majority is satisfied beyond reasonable doubt that the Accused shared the intent with other members of the JCE to rid the enclaves of their Bosnian Muslim population.

1095. The Majority concludes, on the basis of the above, that from at least March of 1995 to August of 1995, the Accused actively contributed to the VRS's implementation of the aims set out in Directive 7 to "create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa", resulting in the forcible removal of

approximately 30,000–35,000 Bosnian Muslims from the enclaves of Srebrenica and Žepa in a period of merely two weeks. The Majority,[4301] Judge Nyambe dissenting, finds that he is criminally responsible as a member of the JCE, under Article 7(1) of the Statute, for the forcible removal of the Bosnian Muslim population of Eastern BiH.

F. Participation of the Accused in the JCE to Murder

1. Submissions of the Parties and Preliminary Considerations

1096. At the outset, the Chamber notes that with respect to the alleged participation in the JCE to Murder, the Accused submits that he was in Žepa at the relevant time and argues that there is no evidence that he knew about any operation to kill the able-bodied men from Srebrenica.[4302] Indeed, as has been established, the Accused was physically present on 13 July in Borike on the outskirts of the Žepa enclave and in the following days was heavily involved in the VRS's activities there, playing a pivotal role in the negotiations on the "evacuation" of the Bosnian Muslims.[4303] In Srebrenica, the separation of the Bosnian Muslim men in Potočari, the surrender and capture of the Bosnian Muslim males from the column, and their subsequent detention and killings were taking place simultaneously.[4304] In this respect, the Chamber recalls that the Accused's participation need not be a *sine qua non* and that it is not necessary for the accused to be present at the time of commission of the alleged crimes in order to incur criminal responsibility through participation in JCE; yet at a minimum, the Accused's contribution must be significant.[4305] For this reason, the Chamber has carefully examined the evidence concerning his actions and conduct throughout the unfolding events in Srebrenica.

1097. The Accused submits that there is no evidence that he commanded, controlled, or provided instructions to the soldiers in Srebrenica for the reason that an assistant commander of the VRS Main Staff "only professionally guides his troops and works on the tasks entrusted with him by the commander";[4306] that in order to control the work of security or any relevant organs, the person in command has to be present or be provided with security reports, which were not sent to him;[4307] and

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4301 Judge Mindua has appended a separate and concurring opinion to the Judgement.

4302 Accused Final Brief, paras. 438, 460; Accused Closing Argument, T. 19527–19529 (22 August 2012), T. 19543 (23 August 2012). The Accused further argues that no reports were sent to him at Bokšanica, so he had no knowledge of the events in Srebrenica. Accused Closing Argument, T. 19529 (22 August 2012).

4303 *See supra* paras. 605–673, 934–935, 948, 950, 953–956, 960–961, 967–975, 977–1001.

4304 *See supra* paras. 1048–1061, 1063–1066.

4305 *See supra* para. 893.

4306 Accused Closing Argument, T. 19527–19528 (22 August 2012) (further arguing that otherwise, "the principle of the singleness of command" would be impaired). *See also* Accused Closing Argument, T. 19530 (22 August 2012).

4307 Accused Closing Argument, T. 19529–19530 (22 August 2012) (arguing that no piece of evidence has been adduced indicating that the Accused was informed about the murder operation). The Chamber notes that this

that when he was in Žepa dealing with the transportation of the Bosnian Muslims, "nobody was killed".[4308] The Accused further submits that there is no evidence indicating that he oversaw Beara and the 10th Sabotage Detachment in the relevant period.[4309]

1098. In this regard, the Chamber recalls its findings that as the Chief of the Sector for Intelligence and Security Affairs, the Accused directed, coordinated, and supervised the work of the two Administrations, subordinate security and intelligence organs, the MP, and others.[4310] Also, in the Accused's professional chain of command, his subordinates, including Beara, Salapura, Radoslav Janković, Popović, Kosorić, Golić, Momir Nikolić, Drago Nikolić, Trbić, Čarkić, and MPs, among others,[4311] were involved in the murder operation one way or another. Being vigilant to the Indictment in which the Accused is not charged with command responsibility pursuant to Article 7(3) of the Statute, the Chamber has assessed the evidence relevant to his subordinates in light of the specific circumstances of this case. The Chamber has paid particular attention to any communications and interactions made between the Accused and his subordinates and subordinate organs so as to determine whether the Accused's authority over his subordinates and their organs was effectively in place during the relevant time. Moreover, the Chamber has carefully taken into consideration his competence as the Chief of the Sector for Intelligence and Security Affairs in regard to preventing the leaking of classified information and covering up the VRS's intentions, to which end, he was kept abreast through the reliable reporting system and no secrets were kept from him.[4312] Furthermore, due to the nature of his supervision of MPs, the Accused was instrumental in matters concerning POW exchanges.[4313] The Accused's related duties deriving from his functions have been examined in detail.

2. Findings

(a) Conduct of the Accused

1099. The Chamber, Judge Nyambe dissenting in part,[4314] has found that by the morning of 12 July, a common plan existed amongst some members of the Bosnian Serb Forces to murder the able-bodied Bosnian Muslim men from the Srebrenica enclave.[4315] The Majority's finding was specifically based on the conversation that Popović, Kosorić, and Momir Nikolić had before the

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argument is also pertinent to his first submission that he was not present at the relevant locations where the crimes were committed.

4308 Accused Closing Argument, T. 19529 (22 August 2012).

4309 Accused Final Brief, paras. 436–448. *See also infra* para. 1111.

4310 *See supra* para. 104.

4311 *See supra* paras. 103–121, 126–127, 131, 137, 142, 146.

4312 *See supra* para. 915.

4313 *See supra* paras. 104, 106, 916.

4314 *See supra* paras. 1046, 1071.

third Hotel Fontana Meeting on the morning of 12 July about the murder operation and Mladić's remark at the same meeting that the Bosnian Muslims in Potočari could "survive or disappear".[4316] The Chamber has also found that the plan to murder the able-bodied Bosnian Muslim men in Potočari quickly extended to include the Bosnian Muslim males from the column.[4317]

1100. Evidence shows that on 11 July, the Accused was aware of the presence of Bosnian Muslims in Potočari—women, children, elderly, and men—and of the column of Bosnian Muslim males. In the late afternoon of that day, Popović informed the Accused personally that thousands of Bosnian Muslim civilians had started to gather in Potočari.[4318] Momir Nikolić gave accounts that he passed along the information about the Bosnian Muslim men gathered in Potočari to the Drina Corps Intelligence Section and Security Department, which Kosorić and Popović were respectively in charge of.[4319] There is no doubt that the Accused knew of the existence of these groups at that time. The Accused's knowledge of these groups is further corroborated by his action in the early morning hours of 12 July. In Bijeljina, the Accused directed Milenko Todorović to prepare the Batković Collection Centre for the arrival of approximately 1,000–1,300 ABiH soldiers over the next few days.[4320] Throughout the day, the Accused's subordinates, such as Pavlo Golić and Popović, were sending reports to, among others, the Accused, about the column and the separation of the Bosnian Muslim males in Potočari.[4321] On the evening of that day, Mladić, Krstić, and others were meeting in Bratunac, having a discussion about securing the Bratunac–Konjević Polje–Milići Road with MUP forces; also, many Bosnian Muslims from the column surrendered to Bosnian Serb Forces during the night of 12 into 13 July.[4322]

4315 *See supra* paras. 1046, 1067, 1071.

4316 *See supra* para. 1045.

4317 *See supra* para. 1047.

4318 Ex. P02518 (Document from Drina Corps IKM in Bratunac to VRS Main Staff Accused "personally", dated 11 July 1995 and signed by Popović). *See also supra* n. 4264.

4319 Momir Nikolić, T. 12373–12374 (6 April 2011) (stating that: "All the information I received on that day [about the Bosnian Muslim gathering in Potočari], in the afternoon and in the evening, just like on each and every previous day and following day, I communicated in writing to the command of the Drina Corps, that is to say, the department for intelligence and security affairs.").

4320 *See supra* para. 931.

4321 Pavle Golić, Drina Corps Intelligence Officer, reported around 4:20 p.m. about the existence of the column, stating that: "We suggest that an ambush be set for this group [...] and that the movement of troops and population along this direction be cut off". Ex. P02527 (Report to the VRS Main Staff, Sector for Intelligence and Security Affairs, Intelligence Administration, Drina Corps IKM in Bratunac, and Kosorić personally, dated 12 July 1995 and signed by Golić "by authorization of the Chief", namely Kosorić). Immediately following this, around 5:30 p.m., Popović reported from the Drina Corps IKM in Bratunac about the column and the Bosnian Muslims in Potočari. Ex. P02069 (Report to the VRS Main Staff, Intelligence and Security Affairs, Security Administration, Drina Corps Command and its Security Department, dated 12 July 1995 and signed by Popović). Notably, Popović referred to the separation of Bosnian Muslim males in Potočari: "We are separating men from 17–60 years of age and we are not transporting them. We have about 70 of them so far and the security organs and the DB/state security/ are working with them". Ex. P02069, para. 3.

4322 *See supra* paras. 317, 319.

1101. Based on the information from his subordinates, after 10:00 p.m. on 12 July, the Accused sent an urgent report and a telegram from the Drina Corps Command, to, among others, Krstić, Popović, and the subordinate intelligence and security organs, as well as to the RS MUP.[4323] In the report, the Accused mentioned that the subordinate intelligence and security organs would propose measures to their commands to prevent the breakthrough of the column and capture the Bosnian Muslims in the column.[4324] In the telegram that followed, the Accused stressed the importance of arresting the Bosnian Muslims from the column and of registering the names of the able-bodied Bosnian Muslim men in Potočari.[4325] This statement conspicuously resembles Mladić's remark in Potočari that the men would be screened to identify war criminals.[4326] The same day, the Accused was also in the VRS Main Staff Headquarters in Crna Rijeka.[4327] While the Accused was directly receiving information from key personnel, including Popović, who was by then a member of the criminal enterprise working to achieve its objectives, the evidence is insufficient for the Chamber to conclude that the Accused had knowledge of the plan at this time. Nevertheless, it demonstrates that the Accused was kept in touch with all the relevant personnel and organs and was made aware of the situation that transpired on the ground in Srebrenica.

1102. The Chamber recalls that throughout 12 and 13 July, the separation of the Bosnian Muslim males in Potočari, their transportation to, and their detention in Bratunac was underway.[4328] Simultaneously, the Bosnian Muslims from the column, who surrendered to or were captured by members of the Bosnian Serb Forces, were detained and mistreated at various sites, including the Nova Kasaba Football Field, where the MP Battalion of the 65th Protection Regiment was deployed.[4329] As of 13 July, the Accused was frequently in the area of Žepa, dealing with the issue of the "evacuation" of Bosnian Muslims in the Žepa enclave.[4330]

1103. On 13 July, around 2:00 or 3:00 p.m., the Accused conveyed to Malinić through Savčić measures to be taken relating to the more than 1,000 Bosnian Muslims captured in the Kasaba area.[4331] Strikingly, the proposed measures of the Accused are analogous to those in Mladić's order issued on the same day.[4332] Particularly the third point the Accused proposed—that Malinić take

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4323 Ex. P02203; Ex. D00064. *See also supra* para. 932.

4324 Ex. P02203, pp. 1–2 (also stating that the RS MUP organs were notified about the "illegal corridor used by the Muslims of Srebrenica since it is their task to control the Bratunac–Konjević Polje road."); Ex. D00064, p. 1.

4325 Ex. D00064, p. 2.

4326 *See supra* para. 1045.

4327 *See supra* para. 931.

4328 *See supra* paras. 280, 285–293.

4329 *See supra* paras. 335–341.

4330 *See supra* paras. 605–673, 934–1001.

4331 Ex. P00125. *See supra* para. 936. The authenticity of this document challenged by the Accused has already been discussed, and the Majority has found that it is authentic. *See supra* paras. 937–944.

4332 Ex. P02420. *See supra* para. 1055. The Chamber also finds that Mladić and Gvero were timely informed of the Accused's proposed measures by Ex. P00125.

measures to remove POWs from the road and detain them indoors or in a protected area not to be seen—echoes Mladić's order to bar leakage of information about POWs.[4333] The Accused's proposed measures, in the Majority's opinion with Judge Nyambe dissenting, reflect the coordinated effort to conceal the despicable plan contemplated among the members of the JCE to Murder. On the same day, killings of the Bosnian Muslim males were taking place, including the large scale killings in Cerska Valley and Kravica Warehouse, where some of those who were detained in the Nova Kasaba Football Field were transported and murdered. Viewed in conjunction with the on-going events, the only reasonable inference to be drawn from this evidence is that by the time Savčić sent the Accused's message,[4334] the Accused knew of the plan to murder the Bosnian Muslims prisoners from Srebrenica. Furthermore, this document also demonstrates his intent to contribute to the JCE to Murder at this point of time. The Accused's knowledge of the murder operation is further supported by the fact that on 13 July at the earliest, in response to Milenko Todorović's inquiry about non-arrival of the anticipated 1,000–1,300 ABiH soldiers, the Accused replied that all preparations should stop.[4335]

1104. In light of the foregoing, the Majority finds that the Accused had knowledge of the murder operation at the latest by the afternoon of 13 July, and from the moment he came to know it, he started actively being involved in the accomplishment of the murder plan, such as proposing measures to be taken with regard to the prisoners detained on the Konjević Polje–Nova Kasaba–Milići road. In addition, Beara, one of the Accused's immediate subordinates, was at Nova Kasaba on the morning of 14 July, by which time Beara himself was actively contributing to the common purpose.[4336] Viewed together, the existence of the Accused's knowledge of the murder plan by this time is palpable.

1105. Around 10:30 p.m. on the evening of 13 July, the Accused sent a telegram from the Rogatica Brigade Command to the VRS Main Staff and Gvero personally; in this telegram the Accused stated that if adequate accommodation for all POWs from Srebrenica could not be found, space for "800" POWs had been arranged in the agricultural buildings in Sjemeč[4337] where they

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4333 Ex. P02420, p. 1; Ex. P00125, p. 1. *See supra* para. 1055. An intercepted conversation dated 13 July at 2:05 p.m. indicates that the participants of this conversation talk about the football pitch, namely, the Nova Kasaba Football Field, and an urgent telegram. They were concerned about the question "is it visible", which the Chamber considers to be a reference to the Bosnian Muslim prisoners detained in the Nova Kasaba Football Field. The conversation further reads: "X. [...] I'll send you an urgent telegram now, don't take anyone /?put out of sight/ a little. I'll send you the telegram now and explain it to you. [...] X. Secure it well and you'll get it now in the telegram." Ex. P00411a.

4334 Ex. P00125.

4335 *See supra* para. 951.

4336 *See supra* para. 340.

4337 *See supra* para. 1105.

could be used for agricultural work,[4338] adding that the transfer of the prisoners "must be done at night" and that "it would be best" if this group has had no contact with the other POWs.[4339] The Accused argues that this evidence indicates that he had no knowledge of the plan to murder the POWs, that he was not responsible for the POWs of Srebrenica, and that he was in fact complying with the relevant rules of the Geneva Convention III relative to the treatment of POWs.[4340]

1106. However, there is evidence demonstrating that 800 POWs would have been beyond the ability of the Rogatica Brigade to handle and its members were not given a task to make necessary arrangements for receiving this large number of POWs;[4341] that in July and August 1995 there were only animals belonging to the locals who used the pasture and kept their cattle in the barn in Sjemeč, and thus there was no farm work to be done;[4342] and that in the end no POWs were transferred to this location.[4343] In effect, the Accused's suggestion to transfer the prisoners to Sjemeč at night paralleled his prior proposal on the afternoon of 13 July to detain the Bosnian Muslim prisoners indoors. Furthermore, considering that the preparation for receiving a large number of POWs at the Batković Collection Centre was interrupted upon the Accused's instruction, the only reasonable inference to be drawn based on this evidence is that the Accused was looking for a place for the prisoners to be out of sight with an aim to further the goal shared with other JCE members.

1107. In the same evening, the Accused's subordinates were organising the transfer of the Bosnian Muslim prisoners from Bratunac to Zvornik; Beara ordered Momir Nikolić in Bratunac to inform Drago Nikolić in Zvornik that the Bosnian Muslims detained in Bratunac were to be transferred to Zvornik, telling Momir Nikolić that the detainees would be killed there.[4344] Meanwhile, Beara was engaged in making necessary arrangements for the burial operation of the dead bodies in the Kravica Warehouse.[4345] Moreover, later that night Beara had a meeting with Deronjić and others in Bratunac, where they openly discussed the murder operation and agreed to have the prisoners transferred to Zvornik next day.[4346] Indeed, the transportation of the prisoners to Zvornik started on the same evening.[4347] Considered together, while there is a possibility that the Accused was not

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4338 Ex. D00049. *See supra* para. 1105.
4339 Ex. D00049. *See supra* para. 1105.
4340 Accused Final Brief, paras. 468–470; Accused Closing Argument, T. 19531–19532 (22 August 2012).
4341 Zoran Čarkić, T. 12728 (13 April 2011) (stating that and additional forces would have to be engaged from Drina Corps to deal with this large number of POWs).
4342 Đoko Razdoljac, T. 8235–8237 (30 November 2010).
4343 *See* Zoran Čarkić, T. 12724, 12728 (13 April 2011).
4344 *See supra* para. 402.
4345 *See supra* paras. 364–366.
4346 *See supra* para. 403.
4347 *See supra* para. 407.

timely informed of where the prisoners would be transferred and executed, this does not negate his accumulated knowledge of the common purpose by then and intent to contribute to it.

1108. With his understanding of the murder operation on the ground, the Accused was simultaneously facilitating the forcible transfer of Bosnian Muslims in the Žepa enclave. Consistent with the Accused's professional role in preventing information leaks and covering up the VRS's intention, on the evening of 14 July, the Accused conveyed a warning from Mladić to the Drina Corps Command and its subordinate units about the presence of an unmanned aircraft.[4348] The Accused submits that in this period the VRS was exposed to threats from NATO and thus such information was regularly provided.[4349] However, given that on this day the killings in Zvornik started in Orahovac, the only reasonable inference is that the Accused sent this warning in order that the murder operation would be carried out without being detected.

1109. The Accused was constantly in touch with his subordinates and personnel in the VRS Main Staff. On 16 July the killings by elements of 10th Sabotage Detachment at the Branjevo Military Farm of the Bosnian Muslim prisoners detained at Kula School in Pilica was under way.[4350] That morning, the Accused spoke with Miletić, instructing him to pass on to Salapura and others in the Accused's Sector the information that it was safer to communicate by telegram through the Drina Corps IKM in Krivače.[4351] In the evening of 16 July, the Accused returned to the VRS Main Staff Headquarters at Crna Rijeka, where he met with Mladić, Keserović, Miletić, and Obradović.[4352] The Accused told Keserović that Beara was in the zone of responsibility of the Drina Corps.[4353] Furthermore, considering the situation on the ground at the relevant time—during the period from 14 to 16 July, Beara and Popović were present throughout in the Zvornik area, making sure that, together with other JCE members, including Drago Nikolić, the murder operation was carried out as planned at the various sites[4354]—there is no doubt that the Accused, considered as Mladić's "eyes and ears", possessed a high level of knowledge of the scale of the murder operation, supported the criminal activities his subordinates were engaging in, and coordinated their work. Given that the

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4348 Ex. P00128; Ex. P00121; Ex. P00147; Ex. P00148. *See supra* para. 953. *See also* Ex. P00124 (another telegram sent by the Accused to the Drina Corps Intelligence Section and Security Department, the Drina Corps IKM, Krstić personally, and the Command of the 65th Protection Regiment, informing the recipients about the unmanned aircraft).

4349 Accused Closing Argument, T. 19532 (22 August 2012). The Accused further argues that this kind of information was regularly provided as can be sent from Ex. P01216, issued by Živanović on 5 July 1995 before the commencement of Operation Krivaja 95, in which Živanović ordered all subordinate units of the Drina Corps and all anti-aircraft units "shall be placed at full combat preparedness in order to act in a timely manner against enemy aircraft and thereby be ready to operate with all available weapons to attack helicopters used by Rapid Reaction Forces [...]."Accused Closing Argument, T. 19532–19533 (22 August 2012).

4350 The Accused's submission in this regard is discussed below. *See infra* paras. 1111–1112.

4351 Ex. P00394a. *See supra* para. 957.

4352 *See supra* para. 958.

4353 *See supra* para. 959.

4354 *See supra* paras. 405–412, 414–434, 439, 441–452, 458, 460–477, 481–503, 1056, 1058–1066.

Accused knew where his subordinates were and was in communication with them while the murder operation was underway, the only reasonable inference to be drawn in the circumstances is that when the Accused was at the VRS Main Staff Headquarters, he was informed about the ongoing murder operation in the Zvornik area.

1110. On 18 July, Radoslav Janković, following instructions given by the Accused on 16 July,[4355] reported on the evacuation of the 22 wounded Bosnian Muslim prisoners from the Bratunac Health Centre, which was organised by the ICRC.[4356] As previously found, on the same day the Accused was involved in the decisions on the evacuation of MSF workers and the "so-called local staff" whose convoy was sent back for procedural reasons.[4357] Radoslav Janković sought and received instructions from the Accused on this subject.[4358] Momir Nikolić testified that he and Janković were "practically certain" that if the local staff had not been allowed to leave, they would have been murdered as well.[4359] By this time, rumours about the missing Bosnian Muslim males from Srebrenica started circulating in the international community, and the Drina Corps's subordinate intelligence and security organs prevented entry of international and domestic media into the RS and controlled its movement.[4360] The only reasonable inference the Majority can draw based on this evidence is that the Accused supervised the evacuation of the wounded and the local MSF staff in Srebrenica with a view to divert attention and pressure from international community about the Bosnian Muslim males from Srebrenica, the majority of whom had been executed by now. This again notably corresponds to his competence—to obscure the VRS's real goals.

1111. On 22 July, Popović sought information about his missing relative from the Accused, who, in turn, told him to do "his job".[4361] Next day, Popović supervised the 10th Sabotage Detachment in the killings of Bosnian Muslim men in Bišina.[4362] Toward this end, the Prosecution alleges that the Accused supervised the 10th Sabotage Detachment on 16 and 23 July, when elements of this unit summarily executed Bosnian Muslim males at Branjevo Military Farm in Zvornik, as well as at Bišina.[4363] The Accused argues that it has not been proven that he oversaw the 10th Sabotage Detachment, elements of which committed the killings in Branjevo Military Farm on 16 and in

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4355 *See supra* para. 958.
4356 *See supra* para. 964. Janković was in direct communication with the Accused on the morning of 18 July. *See supra* para. 963.
4357 *See supra* para. 964.
4358 *See supra* para. 964.
4359 Momir Nikolić, T. 12437 (6 April 2011).
4360 *See supra* para. 1062.
4361 Ex. P00765. *See also supra* para. 976.
4362 *See supra* paras. 542–546.
4363 Indictment, para. 29(c). The Prosecution also alleges that elements of the 10th Sabotage Detachment executed Bosnian Muslim males at Pilica Cultural Centre. *Ibid.* While the Chamber found that members of the Bosnian Serb Forces killed approximately 500 Bosnian Muslim men at this location on 16 July, it did not specifically make a finding that elements of the 10th Sabotage Detachment participated in these killings. *See supra* para. 500.

Bišina on 23 July, respectively.[4364] More specifically, the Accused submits that at the relevant time he was in Žepa;[4365] this unit was an independent unit of the VRS Main Staff, directly subordinated to Mladić;[4366] and the Sector for Intelligence and Security Affairs and the Intelligence Administration "had nothing to do" with this unit's activities in the relevant period.[4367] Conversely, the Prosecution argues that the 10th Sabotage Detachment, given its purview in sabotage and reconnaissance, was controlled by the Intelligence Administration, which is to say by Salapura, who was a direct subordinate of the Accused.[4368]

1112. As previously found, while the 10th Sabotage Detachment was an independent VRS Main Staff Unit directly subordinated to Mladić, due to its reconnaissance tasks, it fell under the competence of Salapura's Intelligence Administration; the Accused was kept abreast of all the actions of the 10th Sabotage Detachment as the direct superior of Salapura.[4369] As previously noted, the Accused was communicating with Salapura on 16 July and Popović on 22 July. Given his authority, it is inconceivable that the Accused was kept in the dark about the murders in the relevant sites at the time; instead, he tacitly approved to make these murders happen.[4370] The Majority has no doubt that he shared the intent to carry out these criminal activities.[4371]

1113. While Beara, Popović, and Jokić were among those who organised and supervised the burials of the Bosnian Muslims killed in Zvornik, the Accused's involvement in concealing the fate of the Bosnian Muslim males—most of them killed and buried by this time—is evident from his report dated 25 July and addressed to Gvero and Miletić personally.[4372] The Accused proposed that the State Commission for Exchange of POWs be advised not to agree to a longer procedure for POW exchanges with the ABiH since Bosnian Muslims could take advantage of the 24 July 1995 Agreement under the pressure from Sarajevo, "which they have already tried to do so by bringing up the issue of the prisoners from Srebrenica".[4373] The only reasonable inference from this evidence

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4364 Accused Final Brief, paras. 440–448; Accused Closing Argument, T. 19534 (22 August 2011).

4365 Accused Final Brief, para. 441.

4366 Accused Final Brief, paras. 443–444; Accused Closing Argument, T. 19534 (22 August 2012) (further arguing that "There is not a single shred of evidence that Tolimir either commanded or made any decisions with regard to the engagement of this Detachment"). The Accused also contends that during the attack on 10 July 1995, the 10th Sabotage Detachment was resubordinated to the Drina Corps Command. Accused Final Brief, para. 445. However, this specific submission is not supported by the evidence before the Chamber.

4367 Accused Final Brief, para. 446 (also arguing that the engagement of the 10th Sabotage Detachment on 16 and 23 July "was an illegal use of this unit for a purpose other than its designated purpose").

4368 Prosecution Closing Argument, T. 19395–19396 (21 August 2012).

4369 *See supra* paras. 120–121, 917.

4370 With regard to the Accused's failure, see *infra* paras. 1116–1128.

4371 The Chamber notes that the Prosecution submits as part of the evidence of the Accused's engagement in concealing the crimes that Salapura requested in 1996 that fake IDs be issued for eight 10th Sabotage Detachment soldiers who were believed to be indicted by the Tribunal. Prosecution Final Brief, para. 816. However, the Chamber cannot make a finding that the action of Salapura was directly linked to the Accused's continuing endeavour to conceal the JCE to Murder.

4372 Ex. P00494.

4373 Ex. P00494, p. 1.

is that the Accused was concerned about diverting pressure from the ABiH with respect to the missing Bosnian Muslim males from Srebrenica.

1114. In August and September 1995, under pressure from the families of the captured VRS soldiers and the Bosnian Muslims, the Accused could not conduct POW exchanges as he simply did not have enough captured ABiH soldiers.[4374] Instead, the Accused lied about the reason why they did not have enough Bosnian Muslim prisoners for exchanges with his own soldiers, stating that "it is not possible to exchange [VRS] prisoners for quite some time, particularly because the VRS Main Staff is not responsible for this situation; rather it is the result of the small number of enemy soldiers captured by our units".[4375] Around this time, the reburial operation took place, which was coordinated and overseen by intelligence and security officers, including subordinates of the Accused, Beara and Popović, based on which the only reasonable inference is that the Accused was informed about the activities.[4376] The Accused's involvement in concealing the murder operation continued up to 1997;[4377] to a request from the Dutch Embassy in Sarajevo, he proposed not to respond and not to assist in the identification of 239 persons that had been listed as present at the UN compound in Potočari on 13 July 1995 only.[4378]

1115. Based on the totality of the evidence, the Majority is satisfied beyond reasonable doubt that through his actions described above, the Accused contributed significantly to the common purpose of the JCE to Murder, sharing the intent to implement it with other members of this JCE.

(b) Failure of the Accused to Protect Bosnian Muslim Prisoners from Srebrenica

1116. The Prosecution submits that as Assistant Commander for Intelligence and Security Affairs, and by virtue of the authority vested in him by his commander, Mladić, the Accused had responsibility for handling of all of the Bosnian Muslim prisoners taken after the fall of the Srebrenica enclave and to ensure their safety and welfare, but he failed to do so.[4379] It is argued that the Accused's "omissions"—his failure to discharge (i) his duty as an agent of the Detaining Power and corresponding duty under international law to protect prisoners within the custody of VRS officers and units over which he had control and (ii) his duty under military regulations and rules

4374 Ex. P02751; Ex. P02250, p. 2. *See also supra* paras. 1003–1004.
4375 Ex. P02250, p. 4.
4376 *See supra* paras. 558–564, 1064, 1066.
4377 Ex. P02433.
4378 Ex. P02433. *See also supra* n. 1231. The Chamber notes that the Prosecution argues that in the context of the Accused's participation in the JCE to Murder, the Accused authorised or approved the killings of the three Žepa leaders in 1995. Prosecution Final Brief, para. 932. As has been previously found, the killings are not allegedly natural and foreseeable consequences of the JCE to Murder, but the JCE to Forcibly Remove. For this reason, the Chamber will not discuss the killings in this context.
4379 Indictment, para. 29(d). *See also* Prosecution Final Brief, paras. 933–942; Prosecution Closing Argument, T. 19404–19413 (21 August 2012).

governing his conduct as a security and intelligence officer—contributed significantly to the common plan to murder the able-bodied Bosnian Muslim males from Srebrenica.[4380] In addition to his arguments with regard to the command and control over his subordinate organs which have been discussed above, the Accused submits that the responsibility over the Bosnian Muslim prisoners in Srebrenica was "vested with the unit that detained them or the unit that they had surrendered to" and that the Security and Intelligence Administration "had no jurisdiction at all or authority to in any way take care of" the POWs.[4381]

1117. The Chamber re-emphasises that the Accused is not charged with command responsibility under Article 7(3) of the Statute, but with individual criminal responsibility under Article 7(1). In this respect, the jurisprudence of the Tribunal dictates that in order to incur criminal responsibility for an omission under Article 7(1), the Accused must have had a duty to act mandated by a rule of criminal law; he must have had the ability to act; he failed to act intending the criminally sanctioned consequences or with awareness and consent that the consequences would occur; and the failure to act resulted in the commission of the crime.[4382] On this basis, the Majority will now turn to determine the allegations.

1118. The Majority recalls that as one of the rules, regulations, doctrines that the VRS adopted from the JNA and applied to its forces, the "Regulations of the Application of International Laws of War in the Armed Forces of the SFRY" ("Regulations")[4383] acknowledges that provisions contained in, *inter alia*, four Geneva Convention of 1949 and two Additional Protocols of 1977, such as humane treatments of POWs and civilians in the hands of a party to a conflict, are also based on international customary law.[4384] This instrument also provides basic provisions concerning prevention of violations of the international laws of war and individual criminal responsibility for war crimes and pertinent responsibility for the actions of subordinates.[4385]

[4380] Prosecution Final Brief, paras. 933–942. *See also* Prosecution Closing Argument, T. 19404–19413 (21 August 2012).

[4381] Accused Closing Argument, T. 19541–19542 (23 August 2012) (citing Ex. D00148, p. 79, item 295, which reads in part: "Logistic support for prisoners of war includes the provision of necessary supplies and health care.").

[4382] *See supra* n. 3528.

[4383] Ex. P02482.

[4384] Ex. P02482, pp. 11–12, Arts. 9–12.

[4385] Arts. 20–22 of the Regulations (Ex. P02482) read:

> 20 Personal responsibility for violations of the laws of war. Every Individual—a member of the military or a civilian—shall be personally accountable for violations of the laws of war if he/she commits a violation himself/herself or orders one to be committed. Ignorance of the provisions of the laws of war does not exonerate the transgressors from responsibility. [...] A person organising, inciting or assisting in the commission of a violation of the laws of war, or an accomplice in the same, shall also be held responsible as a perpetrator.
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> 21 Responsibility for the actions of subordinates. An officer shall be personally liable for violations of the laws of war if he knew or could have known that units subordinate to him or other units or individuals were planning the commission of such violations, and at a time when it was still possible to prevent their commission, failed to take measures to prevent such violations. [...]

1119. With respect to basic rights of POWs, the Regulations provide:

> 207. Responsibility of the State for the treatment of prisoners of war by its nationals. Prisoners of war are under the authority of the Detaining Power, and not of the individual persons or military units which capture them. The Detaining Power shall be responsible for the treatment of prisoners of war. This responsibility does not rule out the personal responsibility of individuals.[4386]
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> [...]
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> 210. Humane treatment. Prisoners of war shall be treated humanely. In particular, they must be protected against violence, insults and intimidation. Prisoners of war are entitled to respect for their persons and honour. They shall retain the full civil, legal and contractual capacities they were enjoying at the time of capture.[4387]
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> [...]
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> 212. Equality of treatment. All prisoners of war shall be accorded equal treatment, without any discrimination whatsoever based on race, nationality, citizenship, religion, political opinions or other criteria.[...][4388]

As Article 207 indicates, the Detaining Power has first and foremost the duty to protect POWs. Under the jurisprudence of the Tribunal, however, the Geneva Convention III accords "all agents of a Detaining Power into whose custody prisoners of war have come with the obligation to protect them by reason of their position as agents of that Detaining Power."[4389]

1120. The RS Criminal Code, which was adopted from the SFRY Code, provides for criminal offences against humanity and international law, including war crimes against the Civilian Population and POWs.[4390] Therefore, members of Bosnian Serb Forces, including the Accused,

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> 22 Responsibility for violations of the laws of war committed on orders. A member of the armed forces shall be liable to criminal punishment also for violations of the laws of war committed by following orders resulting in the commission of a war crime or other grave criminal offence, if he knew that the orders were intended to bring about a violation of the laws of war which constitutes a criminal offence.

See also Ex. P02472, pp. 27–28. *See, e.g., Mrkšić and Šljivančanin* Appeal Judgement, paras. 72, 94.

4386 Ex. P02482, pp. 62–63, Art. 207. *See also* Ex. P02482, p. 74, Art. 253, concerning protection and humane treatment of civilians in the hands of a party to a conflict.

4387 Ex. P02482, p. 63, Art. 210.

4388 Ex. P02482, p. 63, Art. 212.

4389 *Mrkšić and Šljivančanin* Appeal Judgement, para. 73 (further stating that: "all state agents who find themselves with custody of prisoners of war owe them a duty of protection regardless of whether the investment of responsibility was made through explicit delegation such as through legislative enactment or a superior order"). The RS Constitution itself enshrines prohibition of inhumane treatment and unlawful detention. Ex. P02215, p. 3, Arts. 14–15. *See also supra* n. 119.

4390 Article 142 (1) (War Crimes Against the Civilian Population) reads:

> Whoever, in violation of international law in time of war, armed conflict or occupation, orders an attack on the civilian population, settlement, individual civilians or persons *hors de combat*, as the consequence of which death has occurred or serious bodily harm or grave impairment of health; indiscriminate attack affecting civilian population; or killings, tortures or inhumane treatment of the civilian population, [...] unlawful taking to concentration camps and other unlawful confinements [...] exposing of the population to starvation, confiscation of property [...].

Article 144 (War Crimes Against the Prisoners of War) reads:

> Whoever, in violation of international law, orders killings, tortures or inhumane treatment of prisoners of war, or biological experiments, medical or other scientific experiments, removal of body tissues or

were all under the obligation to apply the rules of the international law of war—treaties, customary law, and general principles—and they were to be "regularly instructed" in these rules.[4391]

1121. More directly pertinent to the area of competence of the Accused, the Manual of Intelligence Support included references to certain previsions of the Geneva Convention III concerning the treatment of POWs, directing that these provisions "must be strictly complied with in the treatment of prisoners of war".[4392] The Majority notes that the duties to treat prisoners humanely provided in Article 13 of the Geneva Convention III are also reflected in Common Article 3 of Geneva Conventions, which, as a result of its status as part of customary international law, applies to all parties to both international and non-international armed conflicts.[4393] The Accused's knowledge of relevant international rules is further demonstrated in his own report to the Drina Corps Command dated 9 July 1995, where, in passing on Karadžić's instructions, he ordered Krstić to direct his units to "treat the civilian population and war prisoners in accordance with the Geneva Conventions of 12 August 1949".[4394] Therefore, the Majority finds that as a long-time military officer, the Accused was well-versed in these duties enshrined in the above military regulations and international laws. Indeed, he was duty-bound to comply with these rules.

1122. The Chamber has already found that, by virtue his position, the Accused played the central role in matters concerning POW exchanges.[4395] His long standing involvement in dealing with POW exchanges—from 1992[4396] and throughout 1995[4397]—demonstrates his extensive knowledge of the procedures for exchanges of prisoners. This is further evident in his direct participation in the "negotiations" on the transportation of Bosnian Muslim civilians and the Bosnian Muslim POW

> organs for transplantation, causing of great sufferings or serious injury to body and health, [...] or deprivation of right to a fair and impartial trial [...].

See Ex. P02480, pp. 1, 3.

4391 Ex. P02481 (Order on the Application of the Rules of the International Law of War in the Army of the Serbian Republic of BiH, issued by Karadžić).

4392 Ex. D00248 (Manual of Intelligence Support of the SFRJ Armed Forces in 1987), p. 59. The Manual contains an annex excerpting, *inter alia*, Art. 4 (Definition of POWs), Art. 12 (Responsibility for the treatment of POWs), Art. 13 (Humane Treatment and Prohibition of Reprisal), Art.14 (Respect of Person) of the Geneva Convention III. Ex. D00248, pp. 84–85.

4393 *See, e.g.*, *Mrkšić and Šljivančanin* Appeal Judgement, paras. 70–71 stating that:

> Common Article 3 of the Geneva Conventions reflects the same spirit of the duty to protect members of armed forces who had laid down their arms and are detained as the specific protection afforded to prisoners of war in Geneva Convention III as a whole, particularly in its Article 13" and that: "The fundamental principle enshrined in Geneva Convention III, which is non-derogable, that prisoners of war must be treated humanely and protected from physical and mental harm applies from the time they fall into the power of the enemy until their final release and repatriation. (citations omitted).

4394 Ex. D00041. *See also supra* para. 929.

4395 *See supra* paras. 103, 920.

4396 Ex. P02871 (Report by the Accused concerning the treatment of POWs at the "Manjača" POW Camp to the Department for Intelligence Affairs of the 1st Krajina Corps, dated 9 December 1992, instructing that 132 POWs of Muslim nationality be selected in order to transfer to the Sarajevo-Romanija Corps so that they could be exchanged with the same number of arrested Serbs in the village of Bradina near Konjić and that for more clarification they contact the Accused or Pećanac).

4397 *See, e.g.*, Ex. P02251; Ex. P02250.

exchanges in Žepa. On 28 July, the Accused stated that the Bosnian Muslim men taken from buses during the transportation on 27 July and eventually detained at the Rasadnik Prison would be registered by the ICRC as POWs.[4398] The report dated 30 July by Čarkić on the authorisation of the Accused also indicates that, concerning POWs in the Rasadnik Prison, all the necessary measures of treatment of POWs were taken pursuant to the Accused's orders and instructions, which included categorisation of POWs; supply of meals, medical care, and opportunity for prayer; and registration by ICRC.[4399] Moreover, the cease-fire agreement reached in October 1995 was sent to the VRS Main Staff by the Accused and provided for "humane treatment of all civilians and prisoners of war".[4400]

1123. In several instances, however, the Accused gave conflicting instructions to relevant organs, namely, not to register detainees and not to report them to international organisations.[4401] The only reasonable inference that can be drawn is that the Accused knew what constituted appropriate or inappropriate procedures when it came to the humane treatment of POWs. In light of the fact that the Accused had an informed overview of the fate of the prisoners, the Accused willingly assisted in the JCE to Murder, by issuing orders in conflict with the rules. This also holds true in the case of Beara, one of the Accused's immediate subordinates. Being directly involved in POW exchanges,[4402] Beara was also well cognizant of procedures relating to POWs[4403] and what constituted criminal conduct during the conflict.[4404] On the contrary, Beara, bestowed with legitimacy by his immediate superior, the Accused, became heavily engaged in the murder operation.

1124. As noted above, under the Geneva Convention III, every agent of a Detaining Power has a duty to protect POWs. This was more so in the case of the Accused, who was tasked with dealing

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4398 *See supra* para. 992.

4399 Ex. P01434, p. 3. *See also supra* para. 999.

4400 Ex. D00263, p. 3. *See also supra* para. 1005.

4401 *See, e.g.*, Ex. P00122, p. 2; Ex. P02875 (BiH MUP State Security Sector, dated 3 August 1995, indicating that a conversation between two members of Bosnian Serb Forces was intercepted, in which one participant "passed the order of General Tolimir whom they referred to as Toša, stating: "Do not register the detainees. Talk to them as much as possible and keep them for the future exchanges"). *See also supra* paras. 671, 997.

4402 *See, e.g.*, Ex. P02273; Ex. P02256.

4403 *See, e.g.*, Ex. P02427 (Report from Beara to the MP Battalion of the 65th Protection Regiment with attachments including Popović's report to the Security Administration, discussing a misconduct of a VRS soldier against a captive and emphasising that "nothing must be taken from [those who were transported] from Žepa and that they must not be maltreated").

4404 *See, e.g.*, Ex. P02256, pp. 1–2 (Report from Beara to the Accused personally dated 14 August 1995, informing the Accused that POWs from the Žepa enclave who had fled to Serbia would be extradited to the VRS, provided that the VRS has "compiled, for each individual valid criminal-law documentation of their having committed crimes against international law and humanity" under Chapter XVI of the RS Criminal Code—namely, Crimes Against Humanity and Crimes Against International law under Articles 141–145). *See also* Ex. D00279 (VRS Main Staff Security Administration Report to the RS Ministry of Justice, RS MUP, and Security Departments of the Sarajevo-Romania Corps, Drina Corps, and Herzegovina Corps, dated 10 August 1995 and signed by Beara, referring to the measures to document crimes against "the Serbian people committed by the Turks from Žepa").

with POW exchanges throughout the conflict. Irrespective of the fact that the Accused was not physically present in Bratunac or Zvornik areas, where the detention, murders, burials, and reburials of the Bosnian Muslim males from Srebrenica took place, the evidence leads the Majority to conclude beyond reasonable doubt that the Accused failed to exercise his duty to protect these prisoners.

1125. Yet, in order to implement this duty, the Accused would have needed intelligence and counter-intelligence information through his subordinate units and personnel who were on the ground. The Majority recalls in this regard that throughout his career as a military officer, the Accused's expertise had always been security and intelligence.[4405] Mladić's instructions on command and control of the VRS security and intelligence organs issued on 24 October 1994 reveal that the Accused had central control of their activities.[4406] As the evidence shows, the Accused was indeed providing guidance, instructions, and orders to his subordinates, who were sending him up-to-date information.

1126. By the same token, the Accused kept in close contact with Mladić. They were present together in Žepa being involved in the "negotiations" and at the VRS Main Staff Headquarters at Crna Rijeka, meeting with other collegium members at daily meetings.[4407] The evidence before the Majority casts no doubt on the material ability of the Accused to protect the Bosnian Muslim prisoners from Srebrenica. He could have directed his subordinates to comply with the rules governing the treatment of POWs. Alternatively, he could have confronted Mladić as to what was unfolding with the Bosnian Muslim prisoners from Srebrenica, which was in stark contrast to what they were ostensibly proposing to the Bosnian Muslim local representatives in Žepa, namely, the exchanges of prisoners. There is no evidence which supports these propositions, however. As the Accused himself mentioned, "everybody's subordinate to the commander", namely, Mladić, and the role of professional services was only to facilitate the implementation of any task ordered by Mladić.[4408] This was indeed the case with regard to the Accused's involvement in the murder operation.

1127. Furthermore, the Majority recalls that part of the security organs' functions was the criminal-legal tasks involved in collecting and securing evidence of crimes committed within the VRS units—such crimes included "criminal offences against humanity and international law"—submitting relevant evidence to investigative bodies, and arresting persons accused of such

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4405 *See supra* para. 913.

4406 Ex. P01112, p. 3 (Mladić noted: "Monitoring of the professionalism, legality and correctness of the work of the security and intelligence organs shall be carried out exclusively by the first superior organs for security and intelligence affairs, except in that part of their engagement relating to command and staff affairs.").

4407 *See supra* paras. 617, 629–632, 918.

crimes.[4409] The Accused, together with his subordinates, such as Beara, were in a position to deal with crimes when he found out that they were being committed by their own soldiers.[4410] In fact, nothing was done to this effect.

1128. Having considered the totality of the evidence, the Majority finds that the Accused, who directed, controlled, and supervised his subordinate organs and personnel, willingly contributed to the furtherance of the common purpose of the JCE to Murder. Despite his knowledge of the situation on the ground and of his obligations towards POWs, there is no evidence that the Accused attempted to distance himself from the crimes or take any action to fulfill his duties toward POWs, and instead actively the Accused engaged himself in covering up the common purpose of the JCE, which is in keeping with his competence as Assistant Commander for Intelligence and Security within the VRS Main Staff. With a view to assisting the common purpose shared with the other JCE members, the Accused chose not to act, resulting in the commission of the crimes. Therefore, the Majority is satisfied beyond reasonable doubt that the Accused's failure to protect the Bosnian Muslim prisoners from Srebrenica significantly contributed to the JCE to Murder.

3. Conclusion

1129. In conclusion, having considered the evidence individually and cumulatively, the Majority,[4411] Judge Nyambe dissenting, is satisfied beyond reasonable doubt that the Accused was a member of the JCE to Murder as of 13 July and made a significant contribution to the common purpose through his actions and omissions.

G. JCE III Liability

1. General Submissions of the Parties and Preliminary Considerations

1130. The Indictment alleges that it was foreseeable to the Accused and other JCE members that individual opportunistic killings and persecutory acts described in paragraphs 22 and 34 of the Indictment would be carried out by VRS and MUP forces during and after the JCE to Murder,[4412] and during the JCE to Forcibly Remove.[4413] It is further alleged that it was foreseeable to members of the JCE, including the Accused, that the targeted killings of the three Bosnian Muslim leaders from Žepa set out in paragraph 23.1 of the Indictment would be carried out by Serb forces during

4408 Accused Closing Argument, T. 19529 (22 August 2012).
4409 *See supra* para. 108.
4410 *See, e.g.,* Ex. P02256.
4411 Judge Mindua has appended a separate and concurring opinion to the Judgement.
4412 Indictment, para. 28.
4413 Indictment, para. 61.

the JCE to Forcibly Remove.[4414] Finally, the Indictment alleges that the reburial operation organized by Bosnian Serb Forces and carried out from about 1 August 1995 to 1 November 1995 was the natural and foreseeable consequence of the execution and original burial plan conceived by the JCE to Murder.[4415]

1131. The Accused submits, generally, that he cannot be held responsible for the opportunistic killings, nor for the foreseeable targeted killings in Žepa.[4416]

1132. The Parties' specific submissions with respect to these allegations are set out in the relevant subsections below.

1133. The Chamber recalls here its finding made earlier in the Judgement that the opportunistic killings enumerated in paragraph 22.1 (b)–22.4 and the foreseeable targeted killings in paragraph 23.1 of the Indictment amount to acts of murder, committed by Bosnian Serb Forces.[4417] These acts of murder have also been found to amount to persecutions.[4418] In this section, the Chamber determines whether these acts were foreseeable, generally, to the Bosnian Serb Forces, and specifically, to the Accused as charged.

2. Opportunistic Killings and Persecutory Acts[4419]

(a) Submissions of the Parties

1134. The Prosecution alleges that by virtue of his position as Main Staff Assistant Commander for Intelligence and Security throughout the war, the Accused had full knowledge of the historical context, build up of ethnic hatred and the policy of "ethnic cleansing" pursued by the RS prior to

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[4414] Indictment, paras 23.1, 61. The Prosecution, in its Final Brief, appear to argue that the foreseeable targeted killings were also the natural and foreseeable consequence of the JCE to Murder (*see* Prosecution Final Brief, para. 948). The Chamber however, shall limit its findings to the specific allegations in the Indictment, the primary accusatory instrument against the Accused, which clearly charges the foreseeable targeted killings as a natural and foreseeable consequence of only the JCE to Forcibly Remove. *See ibid.*

[4415] Indictment, para. 23.1.

[4416] Accused Closing Argument, T. 19514 (22 August 2012) (with regard to opportunistic killings); Accused Final Brief, paras 478, 496 (asserting generally, that the killings of these men could not have been foreseeable to the Accused). *See also* Accused Closing Argument, T. 19542–19543 (23 August 2012) (with respect to Avdo Palić).

[4417] *See supra* para. 721.

[4418] *See supra* para. 863.

[4419] The Chamber notes that the Prosecution's submissions in its Final Brief and Closing Argument are not entirely reflective of the charges in the Indictment as set out in paragraphs 28 and 61 (*see supra,* para. 1 of this section), and, indeed, of the submissions set out in the Prosecution Pre-Trial Brief (*see* paras. 37, 178, 188–189). Paragraph 900 of the Prosecution Final Brief refers to the opportunistic killings and persecutory acts as being the natural and foreseeable consequences of the JCE to Forcibly Remove only, while paragraph 948 refers to the opportunistic killings as the foreseeable consequences of the JCE to Forcibly Remove as well as the JCE to Murder. The Prosecution Closing Arguments do not provide clarification in this regard. *See* Prosecution Closing Argument, T. 19436–19440 (21 August 2012). While it is not clear on the basis of the Prosecution's submissions that persecutory acts are alleged to also have been the natural and foreseeable consequence of the JCE to Murder, the Chamber is led by the Indictment as the primary accusatory instrument in this respect, and shall consider them as such.

July 1995, and could foresee that serious acts of violence—including opportunistic killings and persecutory acts—would be committed against the Bosnian Muslims in the enclaves of Srebrenica and Žepa.[4420] It is the position of the Prosecution, further, that the Accused not only had full knowledge of the "ethnic cleansing" operations that took place in Srebrenica and Žepa, he personally proposed the use of violence in the course of such operations,[4421] and could expect that other members of the VRS and his subordinates would share in his attitude of disregard for the lives of Bosnian Muslims.[4422]

1135. The Accused does not make specific submissions concerning his liability for the opportunistic killings and persecutory acts alleged to have been the foreseeable consequence of the implementation of the alleged JCEs, as set out in paragraphs 22 and 34 of the Indictment, respectively.

(b) Findings

1136. The JCE to Murder, as established by the Chamber, resulted in thousands of killings in a short period of time, involving a variety of VRS and MUP units. Many of these forces had taken part in combat against Bosnian Muslim forces in other parts of the territory.[4423] By the time the VRS launched its attack on Srebrenica, the ethnic tensions that had built up from the start of the war in Bosnia in 1992 had resulted in a highly volatile situation on the ground. The triumphant and euphoric frenzy amongst Bosnian Serb Forces following the capture of Srebrenica—captured on video-footage, with Mladić informing his forces that the "time has come to take revenge on the Turks in this region"[4424]—is, in the view of the Majority, demonstrative of the mental state of members of the JCE as the goal set out in Directive 7 to ethnically separate the Serbs from the Muslims appeared close at hand. The VRS shelled both sides of the road along which the column of Bosnian Muslim civilians was making its way to seek shelter at the UN compound in Potočari following the takeover of Srebrenica; this was found by the Chamber to have been committed with the aim of terrorising the population.[4425] It recalls here that the plan to kill the able-bodied men from the Srebrenica enclave had emerged by the early morning of 12 July.[4426] The large and rapid influx of various VRS and MUP units arriving in Potočari during and after its takeover in the course of that morning set the stage for the severe beatings, verbal abuse and the opportunistic killing that

4420 Prosecution Final Brief, paras. 901– 902; Prosecution Closing Argument, T. 19439–19440 (21 August 2012).
4421 Prosecution Final Brief, para. 903; Prosecution Closing Argument, T. 19439–19440 (21 August 2012).
4422 Prosecution Final Brief, paras. 903, 906.
4423 *See, e.g.*, paras. 232, 547.
4424 *See* Ex. P02798, Disc 1, 00:24:30–00:33:14, pp. 6–12.
4425 *See supra* para. 233.
4426 *See supra* para. 1046.

the Majority has found to have taken place upon an already terrorised and vulnerable civilian population.[4427]

1137. In this context, the Majority has no doubt that it was foreseeable to members of the JCE that persecutory acts would be committed by Bosnian Serb Forces mingling with the crowds of Bosnian Muslim civilians in Potočari; this was foreseeable to them on the basis of both the JCE to Forcibly Remove and the JCE to Murder, which were in existence by 8 March and the morning of 12 July 1995, respectively. Equally, the Chamber considers that the killing that took place in Potočari on 13 July 1995, as detailed in paragraph 22.1(b) of the Indictment, was the foreseeable consequence of both the JCE to Murder as they occurred following the conceptualization of the plan to murder, and the JCE to Forcibly Remove, as they occurred in the immediate context of the forcible removal operation.

1138. The Majority further finds that the opportunistic killings that occurred outside of Potočari—namely in Bratunac, at the Kravica Supermarket, and at Petkovci school as set out in paragraph 22.2–22.4 of the Indictment—were the natural and foreseeable consequence of the JCE to Murder. It is not satisfied, however, that these opportunistic killings were the foreseeable consequence of the JCE to Forcibly Remove. The Chamber considers that the operation to forcibly remove the Bosnian Muslim population from Srebrenica was completed by the end of 13 July 1995, with the transfer of approximately 25,000–30,000 women, children and elderly to BiH held territory, followed up by the transfer of some wounded in the days thereafter. The Chamber has found that the crime of forcible transfer did not encompass the removal of the men from Potočari or the transportation of the men who were captured from the column.[4428] In the view of the Chamber, the movement of the men to Bratunac, the Kravica Supermarket and Petkovci school, as set out in paragraph 22.2–22.4 of the Indictment, was part of a quite separate operation, and the subsequent murder and severe beatings of these men can therefore not be considered to have been the natural and foreseeable consequence of the JCE to Forcibly Remove.

1139. The Majority, Judge Nyambe dissenting, has found that the Accused was a member of the JCE to Forcibly Remove from the start, in March of 1995, and joined the JCE to Murder at the latest by the afternoon of 13 July 1995.[4429] The question before the Majority is whether the persecutory acts carried out against Bosnian Muslim civilians in Potočari and in detention facilities in Bratunac and Zvornik, and the opportunistic killings in Potočari, Bratunac town, Kravica Supermarket and Petkovci School were foreseeable to him. The law requires that an extended crime

[4427] *See supra* Chapter V. B.
[4428] *See supra* paras. 821, 841.
[4429] *See supra* paras. 1095, 1104, 1115.

must be "reasonably foreseeable based on the information available to the accused at the time that the crime or underlying offence would be committed",[4430] and the Prosecution must prove that the accused had sufficient knowledge that the extended crime was a natural and foreseeable consequence of the common criminal purpose.[4431]

1140. The Majority finds that at the time the opportunistic killing and the persecutory acts were committed in Potočari on 12 and 13 July 1995, the Accused had knowledge of the approximately 25,000–30,000 Bosnian Muslim civilians gathered at the UN compound as a result of the VRS attack against Srebrenica. By virtue of his position in the Main Staff and through the direct involvement of his subordinates on the ground, the Majority finds he had knowledge of the fact that VRS forces had seized control of Potočari early on 12 July 1995 and that Potočari was overrun with Bosnian Serb Forces in the course of that morning. At the time these persecutory acts and opportunistic killings in Potočari occurred, and indeed from the commencement of the JCE to Forcibly Remove in March of 1995, the Accused was a contributing member to it, and fully shared the intent to make life for the inhabitants of Srebrenica enclave unbearable with a view to their removal. He was no doubt aware of the ethnic hatred between Bosnian Muslims and Serbs, having himself reverted to derogatory slang on multiple occasions throughout the course of the conflict.[4432] The Majority, Judge Nyambe dissenting, is satisfied, on this basis, that through his participation in the JCE to Forcibly Remove, the Accused willingly accepted the risk of persecutory acts, including murder, occurring in Potočari on 13 July. The possibility of these crimes occurring was sufficiently substantial as to have been foreseeable to the Accused.

1141. The Majority recalls that the Accused became a member of the JCE to Murder at the latest by the afternoon of 13 July. He can therefore not be held criminally responsible pursuant to the extended form of JCE liability for the mistreatment and killings of Bosnian Muslim civilians that occurred before he joined the JCE. In this regard, and recalling its findings on the opportunistic killing of one Bosnian Múslim man in Potočari on 13 July 1995 made elsewhere in the Judgement, it cannot be conclusively determined that it occurred after the Accused joined the JCE to

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4430 *See supra* para. 897.

4431 *See supra* para. 897.

4432 *See, e.g.*, Ex. P02485, p. 1 (a document issued by the Accused on 25 October 1993 concerning prisoner exchange issues, referring to the exchange of 54 "Turks"); Ex. P02274, p. 1 (document issued by the Accused on 4 June 1995, referring to the exchange of prisoners with, *inter alia,* the "Balija side"); Ex. P00371a (intercepted conversation between the Accused and an unknown person on 20 July 1995, informing that the "[t]he Turks don't want to negotiate"); Ex. P02156, p. 6 (intercept dated 3 September 1995 of a conversation between, *inter alia,* Karadžić and the Accused, in which the Accused refers to "Turks"). *See also* Ex. P02468, p. 1, (intercepted conversation between Karadžić and the Accused on 21 November 1995, in which the Accused is recorded telling Karadžić that "[t]he Turks are getting angry"). Other exhibits issued by his immediate subordinate Beara further reflect the Accused's tolerance of this derogatory language vis-à-vis Bosnian Muslims. *See e.g,* Ex. P02273; Ex. D00279; P02256.

Murder.[4433] Similarly, with respect to the opportunistic killings set out in paragraph 22.2(a) of the Indictment, the Chamber recalls its findings that these murders occurred over a period of two days, starting on 12 July and into the afternoon of 13 July. The evidence as to the specific timing of these killings is similarly inconclusive, and the Majority will therefore not find the Accused criminally liable for these acts pursuant to JCE III, as a natural and foreseeable consequence of the JCE to Murder.[4434]

1142. With respect to the killing of Bosnian Muslim men both inside and outside of the Vuk Karadžić elementary school in Bratunac, as set out in paragraph 22.2(d) of the Indictment, the Chamber recalls its findings that some of the killings occurred on the night of 12 July and in the morning of 13 July, with further killings occurring throughout the day, into the night of 13 July, and up to the morning of 14 July.[4435] The Majority considers, therefore, that only those killings that occurred on the night of 13 July and on the morning of 14 July were reasonably foreseeable to the Accused, on the basis of his membership in the JCE to Murder.

1143. The remainder of the opportunistic killings set out in paragraphs 22.2(b)–(c), 22.3 and 22.4 of the Indictment have been found by the Chamber to have been committed after the Accused became a member of the JCE to Murder.[4436] Through his participation in the JCE to Murder, the Accused willingly accepted the risk that the mistreatment and murder of these Bosnian Muslim men would be a possible consequence of the implementation of that JCE; the Majority finds that they were reasonably foreseeable to the Accused on this basis.

1144. In conclusion of the above, the Majority, Judge Nyambe dissenting, finds that the Accused is criminally responsible, pursuant to JCE III, for the persecutory acts, including the opportunistic killing of one Bosnian Muslim man in Potočari, as a natural and foreseeable consequence of the JCE to Forcibly Remove. The Majority, Judge Nyambe dissenting, also finds him to be criminally responsible, pursuant to JCE III, for the persecutory acts, including opportunistic killings set out in paragraph 22.2(b)–(c), paragraph 22.2(d) (limited to the killings that occurred in the night of 13 July and in the early morning of 14 July), paragraph 22.3 and paragraph 22.4 of the Indictment, pursuant to JCE III, as a natural and foreseeable consequence of the JCE to Murder.

[4433] *See supra* Chapter V. B. 5. (b).
[4434] *See supra* Chapter V. C. 3. (f).
[4435] *See supra* Chapter V. C. 3. (f).
[4436] *See supra* Chapter V. C. 3. (f).

3. Foreseeable Targeted Killings of Three Muslim Leaders of Žepa

(a) Submissions of the Parties

1145. The Prosecution alleges that the murders of Palić, Hajrić and Imamović were the natural and foreseeable consequence of the JCE to Forcibly Remove given that this campaign took place in the context of a war which had seen such widespread killings,[4437] and the murder of these men occurred as JCE members sought to complete their goals of "cleansing Žepa of its Muslim population".[4438] According to the Prosecution, it was foreseeable that extreme violence would be used against the core part of the Žepa leadership, as there was a pattern of murder of prominent leaders throughout the war, alongside the destruction of Muslim cultural sites and mosques.[4439]

1146. With respect to the Accused in particular, the Prosecution submits that given his own involvement and that of his subordinates in the capture and detention of these three men, and the fact that some of his subordinates—notably Beara, Salapura, Pećanac, Popović, Momir Nikolić and Drago Nikolić—used or permitted the use of fatal violence against Bosnian Muslims prisoners during the operation in Srebrenica and in VRS military prisons, the possibility that the three men would be killed was foreseeable to him.[4440] Finally, as argued for the opportunistic killings and persecutory acts, the Prosecution stresses the Accused's disregard for life demonstrated by, *inter alia,* the 21 July 1995 order in relation to Žepa to "destroy groups of Muslim refugees", on the basis of which he could expect that his subordinates would exhibit a similar propensity to use fatal violence.[4441]

1147. The Accused submits that as he did not participate in the JCE to Forcibly Remove, the charge of foreseeable targeted killings as a result of this JCE is "unfounded".[4442] With respect to Hajrić and Imamović, he submits nonetheless, that he took an interest in their correct treatment once detained at Rasadnik; they were accommodated in an adequate holding centre, treated as prisoners of war, registered by the ICRC, and were allowed to send letters to their families.[4443] With respect to Avdo Palić, the Accused submits that in the absence of evidence concerning the circumstances in which Palić lost his life after being taken from the Mlin Military prison by Pećanac on the night of 4–5 September 1995, there is no basis for the Accused to have foreseen his

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4437 Prosecution Final Brief, para. 481.
4438 Prosecution Closing Argument, T. 19444 (21 August 2012). *See also* Prosecution Final Brief, para. 482.
4439 Prosecution Final Brief, para. 905.
4440 Prosecution Final Brief, paras. 482–483, 906, 948; Prosecution Closing Argument, T. 19442 (21 August 2012).
4441 Prosecution Final Brief, paras. 903, 906.
4442 Accused Final Brief, paras. 475, 478.
4443 Accused Final Brief, paras. 482–489.

alleged murder at the time he was captured.[4444] Moreover, the Accused submits, by 30 July 1995, he had already left for the front in Grahovo and Glamoč.[4445]

(b) Findings

1148. The Chamber recalls that Palić, Hajrić, and Imamović fell into VRS custody on 27 July 1995. Hajrić and Imamović were taken to Rasadnik Prison and held in a separate room. They were removed from this room in mid-August and never returned. Palić was held separately, first at the Borike Hotel in Rogatica and then at Čarkić's apartment in Rogatica, before being transported, at Beara's order, to the Mlin Military Prison in Bijeljina on 10 August. On 5 September, Pećanac collected Palić from the prison and took him to Han Pijesak. The bodies of these three men were discovered in a grave containing nine bodies, in Vragolovi, Rogatica; each of their autopsy reports reveal their deaths were violent.[4446]

1149. In its determination of whether the murders of the three Bosnian Muslim leaders of Žepa were the natural and foreseeable consequence of the operation to forcibly remove Žepa's civilian population as charged in the Indictment, the Majority has considered a number of factors. The JCE to Forcibly Remove encompassed the population of Srebrenica as well as of Žepa. Srebrenica's civilian population, mainly women, children and elderly, had been transported to ABiH held territory by 13 July, with some of the wounded following in the days thereafter. The Majority has already found that persecutory acts committed by Bosnian Serb Forces between 11 and 13 July, as well as the opportunistic killing of one Bosnian Muslim man that occurred at the UN compound on 13 July 1995, were the natural and foreseeable consequence of the JCE to Forcibly Remove.

1150. By the time the forcible removal of Žepa's operation commenced, the prevailing atmosphere of impunity that hung over the preceding events in Srebrenica increased the real possibility that killings could result while Bosnian Serb Forces moved towards completion of their goal of ridding the enclaves of its Bosnian Muslim population. Fatal violence was, as in Potočari, a foreseeable consequence of the implementation of this operation. The forces that took part in Žepa's takeover included forces who had taken part in the capture of Srebrenica. Palić, Hajrić and Imamović were prominent and important representatives of Žepa's Muslim population. A VRS intelligence report dated 28 May 1995, authored by Pećanac, expresses concern with the appointment of Hajrić, recorded as being a "Hoxha" (Imam), as President of the War Presidency, noting that "in this manner, the hard-line fundamentalist faction has since recently come to power in Žepa."[4447] The

[4444] Accused Final Brief, para. 496.
[4445] Accused Final Brief, para. 495.
[4446] *See supra* paras. 654–680.
[4447] *See* Ex. P02212, p. 20.

Majority recalls the evidence of Žepa imam Ramiz Dumanjić that while boarding a bus during the forcible removal of Žepa's population at the end of July, he feared for his life should the VRS find out he was an imam, as he had heard of other imams being killed by Bosnian Serb Forces during the war.[4448] In the view of the Majority, Judge Nyambe dissenting, it was foreseeable that these killings might be committed by Bosnian Serb Forces in the completion of the JCE to forcibly remove the Bosnian Muslim population from Žepa.

1151. Turning specifically to the question of whether the Accused could reasonably foresee that these crimes would occur as a consequence of the JCE to Forcibly Remove, the Majority recalls that he was a member of the JCE from its inception in March of 1995, and shared the intent with other members in the JCE to remove the Bosnian Muslim population from eastern BiH. It was the Accused who proposed that the VRS move quickly to capture Žepa town, given their successes in Srebrenica. At the time the Accused made this proposal, he was a member of the JCE to Murder and would have known that sending the forces from Srebrenica to Žepa to take control of it entailed the risk that members of these forces may engage in further killings, as had occurred in Potočari and several locations in Bratunac by the time he made this proposal and the forces left for Žepa.[4449] Security organs under his professional command took an active part in the mistreatment of detained prisoners and the killings that occurred during the JCE to Murder. In light of his duties, under the applicable laws and regulations, to ensure the safety of these prisoners, the activities of his subordinates could not have escaped his attention. The Majority, Judge Nyambe dissenting, finds that on this basis alone, the possibility that the three Bosnian Muslim leaders of Žepa would be killed was sufficiently substantial as to be reasonably foreseeable to the Accused.

1152. The Majority further takes particular note of the involvement of the Accused and his subordinates, including Beara, Pećanac, Čarkić, and Todorović, in the detention of Palić, Hajrić and Imamović.[4450] The fact that an ICRC team visited Rasadnik prison on 30 July and registered the POWs held there at the time[4451] has no bearing on the Accused's foreseeability that these men could be killed. Both Hajrić and Imamović were physically beaten and mistreated while held in the "infamous room" of Rasadnik prison following their transfer to this facility at the end of July.[4452] An ICRC team visiting Rasadnik prison on 23 October 1995 was told that three detainees "escaped" since the ICRC's last visit on 21 August (a visit which was, notably, interrupted as ICRC delegates

[4448] Ramiz Dumanjić, T. 17939-17940, T. 17957–17958 (29 September 2011).
[4449] The document whereby the Accused made this proposal is Ex. P00145. It is clear from the information contained in this report and more specifically, the time references, that it was drafted late on 13 July 1995, by which time several killing had already taken place. The attack on Žepa began on 14 July 1995. *See supra* para. 612.
[4450] *See supra* paras. 654–680.
[4451] *See* Ex. D00211.

were denied access to private interviews with the detainees).[4453] Džebo testified that these three men referred to in the ICRC report could only be Hajrić, Imamović and a Bosnian Muslim man by the name of Esad Cocalić, because they were the only three people missing at that time from the list that was issued by Čarkić on the Accused's authorization on 30 July 1995.[4454] Džebo testified, moreover, that these men could not have "escaped".[4455] The Majority recalls its finding that they were removed from the Rasadnik prison by VRS forces around mid-August. The bodies of Hajrić and Imamović were found in a mass grave on 12 November 2001 in Vragolovi, Rogatica, and their autopsies reveal they suffered a violent death, caused by injuries to the head and skull.[4456]

1153. With respect to Avdo Palić, the Majority recalls its earlier findings of the Accused's personal dealings with him before, during and after the forcible removal operation of Žepa's population.[4457] The Accused's immediate subordinate, Beara, was involved in transferring Palić to the Mlin Military prison on 10 August 1995. Two weeks later, Pećanac, the Accused's subordinate with whom he actively carried out the forcible removal operation in Žepa at the end of July, picked Palić up from this facility and took him to Han Pijesak.[4458] A receipt of the handover of Palić to Pećanac on the night of 5 September 1995 records that Palić was being transferred "for the needs of the unit/organization Intelligence Sector of the VRS Main Staff".[4459] Han Pijesak was the location of the Main Staff's rear command post, only four kilometres from the Main Staff Headquarters in Crna Rijeka.[4460]

1154. The Accused submits that from 30 July 1995 onwards, he was at the Grahovo and Glamoč front. The Majority finds, however, that his physical absence from the Rogatica area is irrelevant in the Chamber's determination of whether the murders of Palić, Hajrić, and Imamović were foreseeable to him. In the view of the Majority, Judge Nyambe dissenting, as a member of the JCE to Forcibly Remove, the Accused willingly accepted this risk by participating in the JCE with the awareness that these crimes were a possible consequence of its implementation. The Majority considers, in this respect, that on the basis of the information available to him at the time, this

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4452 Meho Džebo, T. 14841–14842 (31 May 2011) (testifying that while he himself did not spend time in this room, others who later joined him in the room where he was kept told him that Hajrić and Imamović had also been kept in the infamous room for some time).

4453 Ex. P02253, p. 3.

4454 Meho Džebo, T. 14845 (31 May 2011); Ex. P01434 (a document dated 30 July 1995 issued by Čarkić including a list detailing the names of Muslims held at Rasadnik Prison camp as POWs). The document records that the individuals on this list, including Hajrić and Imamović, were registered by the ICRC on this day. Ex. P01434, pp. 1, 5.

4455 Meho Džebo, T. 14845 (31 May 2011).

4456 *See supra* para. 680.

4457 *See, e.g.*, paras. 646, 666, 672, 985, 990, 993, 999.

4458 *See supra* para. 679.

4459 Milenko Todorović, T. 13004–13007 (19 April 2011), T. 13090 (20 April 2011); Ex. P02182.

4460 *See, e.g.* Petar Škrbić, T. 18524–18525 (30 January 2012), T. 18605–18606 (31 January 2012). *See supra* para. 81.

possibility was sufficiently substantial to him as to have been reasonably foreseeable. The Accused is, therefore, criminally responsible for the killing of these three men by Bosnian Serb Forces, pursuant to the third category of JCE liability.

4. Reburial Operation

1155. This Chamber concurs with the finding of the *Popović* Trial Chamber that only a crime in itself under the Statute can constitute an extended crime pursuant to the third category of JCE.[4461] The reburial operational alleged in paragraph 23 of the Indictment, in the view of the Chamber, can therefore not legally constitute a foreseeable consequence of the alleged JCE to Murder.

H. Findings in Relation to Counts

1156. In this section, the Chamber determines the Accused's criminal responsibility for the crimes charged under Counts 1–8 of the Indictment.

1. Count 1: Genocide

1157. The Chamber has found, Judge Nyambe dissenting in part,[4462] that the protected group—the Bosnian Muslim population of Eastern BiH—was murdered and suffered serious bodily and mental harm by acts of murder and forced movement, and that the conditions resulting from the acts of Bosnian Serb Forces, as part of the combined effect of the forcible removal and murder operations, were deliberately inflicted and calculated to lead to the physical destruction of the Bosnian Muslim population of Eastern BiH.[4463] The Chamber, Judge Nyambe dissenting in part on the underlying acts constituting forcible transfer, also found that these criminal acts were committed with the intent to physically destroy the protected group, thus amounting to the crime of genocide.[4464] The Chamber now turns to the question of whether the Accused had the requisite *mens rea* for the crime of genocide, namely, a specific intent "to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

1158. The Prosecution submits that the Accused possessed genocidal intent and that such intent can be inferred from the combination of his knowledge of, and participation in, the forcible removal operation, the murder operation, the persecutory crimes and the underlying acts; his failure to take any steps to prevent these crimes from occurring; and his fostering and toleration of a culture whereby security and intelligence officers could freely refer to and treat Bosnian Muslims in a

4461 *Popović et al.* Trial Judgement, para. 1032.
4462 *See supra* paras. 759, 766.
4463 *See supra* paras. 750–767.
4464 *See supra* paras. 768–782.

derogatory and dehumanising way.[4465] It is further argued that the Accused's acts and omissions in furtherance of the JCE to Murder, such as his efforts to conceal crimes and proposals and orders to ensure that Bosnian Muslim males be detained and exterminated in secret, were calculated to achieve destruction; that his involvement and position as Assistant Commander for Intelligence and Security Affairs ensured that he was aware of the destructive consequences of the murders and the forcible removal for the Bosnian Muslims in Eastern BiH; that the Accused commanded or controlled his immediate and professional subordinates that were at the heart of the operation's implementation and achievement; and that the Accused coordinated the flow of information within the Bosnian Serb Forces, disseminating and restricting it.[4466] The Chamber addresses these arguments more in detail below.

1159. The Accused submits that he is not guilty of the crime of genocide.[4467] He argues that the case against him is highly circumstantial and that the Prosecution has failed to meet its burden of proof.[4468]

1160. The Majority first notes that while it has been satisfied, as set out below, that the Accused had the requisite intent to discriminate against the Bosnian Muslim population in the Srebrenica and Žepa enclaves on political, racial and religious grounds,[4469] this does not fulfil the requirement of genocidal intent, as such intent has to be aimed at destroying the protected group itself—the Bosnian Muslim population in Eastern BiH. Whether the Accused possessed this genocidal intent will be elaborated in what follows.

1161. In its assessment of the Accused's genocidal intent, the Chamber is guided by the jurisprudence of the Tribunal that as indications of such intent are rarely overt, inference is allowed based on the totality of evidence.[4470] Inference may be based on the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities, the systematic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, the existence of a plan or policy, and a perpetrator's display of his intent through public speeches or meetings with others.[4471] In this context, the Majority is of the view that other factors to be taken into account include the Accused's education, his experience as an officer, his general capabilities especially with respect to his duties and responsibilities stemming from his specific professional position.

[4465] Prosecution Final Brief, paras. 943–944.
[4466] Prosecution Final Brief, paras. 945–946.
[4467] *See* Accused Final Brief, paras. 439, 448, 506.
[4468] Accused Final Brief, paras. 1, 19.
[4469] *See infra* para. 1190.
[4470] *See supra* para. 745.
[4471] *See supra* para. 745.

1162. The Majority has found that the Accused was a member of the JCE to Forcibly Remove, the common purpose of which was to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves, and he shared the intent with other members of the JCE and significantly contributed to the common purpose.[4472]

1163. While discussed in detail elsewhere, the Majority considers it necessary to recapitulate its findings on the Accused's participation in the JCE to Forcibly Remove and in the JCE to Murder. With respect to the former, it has been found that from at least March to August 1995, the Accused was actively involved in the VRS's implementation of the aims set out in Directive 7 to "create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa", resulting in the forcible removal of approximately 30,000–35,000 Bosnian Muslims from the Srebrenica and Žepa enclaves in a time span of less than two weeks.[4473] The Accused, playing a coordinating and directing role, participated in the restrictions of aid convoys for the civilian population entering the enclaves; actively contributed to the aim of limiting UNPROFOR's ability to carry out its mandate; facilitated the VRS's takeover of the enclaves by keeping UNPROFOR at bay and making false claims concerning VRS intentions; and was aware, through the presence on the ground of his subordinates in the professional chain of command, of the forcible removal of approximately 25,000–30,000 Bosnian Muslims gathered at Potočari to ABiH held territory on 12–13 July.[4474] The Accused carried on contributing to the JCE by way of his direct and active involvement in the preparation and implementation of the forcible removal of Žepa's civilian population at the end of July; and he was actively involved in the "negotiations" held in July and in charge of the removal of Žepa's civilian population, directing forces on the ground.[4475]

1164. With regard to his participation in the JCE to Murder, it has been found by the Majority that at the latest by the afternoon of 13 July the Accused became a member of the JCE to Murder, the common purpose of which was to murder the able-bodied Bosnian Muslim males from the Srebrenica enclave, and that he shared the intent to implement the common purpose with other members of the JCE and significantly contributed to it.[4476] More specifically, the Accused's significant contribution entailed a continuing involvement in concealing the murder operation and his failure to protect the Bosnian Muslim prisoners.[4477] Through the effective communication channels with his subordinates and his superior, Mladić, the Accused engaged in covering up the

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4472 *See supra* paras. 1093–1095.
4473 *See supra* para. 1095.
4474 *See supra* para. 1093.
4475 *See supra* para. 1094.
4476 *See supra* para. 1104.
4477 *See supra* paras. 1104–1128.

common purpose, despite his extensive knowledge of the situation on the ground and of his obligations towards POWs.[4478]

1165. In reaching its conclusion that the Accused was a member of both JCEs, the Majority particularly took into account the Accused's functions and authority; via reliable communication channels, the Accused remained up to date with what was afoot on the ground in the Srebrenica and Žepa enclaves, through his subordinates and subordinate organs.[4479] Moreover, the Accused was one of Mladić's most trusted associates, even within the collegium.[4480] The two were in close contact, with both attending daily meetings at the VRS Main Staff Headquarters, engaging in the "negotiations" on the Bosnian Muslim civilian population in Žepa and their forcible removal, and with the Accused timely reporting to Mladić.[4481] The Accused was Mladić's "right hand" man, and they were "closer to being equals".[4482] He was considered to be Mladić's "eyes and ears". Because of this specific and very close relationship to Mladić, the Accused was even more influential and better positioned to take part in all actions of the Main Staff of the VRS in the relevant time.

1166. As has been found by the Majority, the only reasonable inference to be drawn from the evidence is that members of Bosnian Serb Forces, including the Accused's superior and subordinate officers, were extensively involved in the murder operation, the implementation of which was unequivocally carried out with genocidal intent. The Accused's actions and omissions contributed to this joint and insidious effort.[4483] The Majority finds beyond reasonable doubt that the Accused was aware that the suffering inflicted upon the Bosnian Muslim population as a result of the forcible removal operation in the Srebrenica and Žepa enclaves, the latter of which he was directly put in charge of, was committed with genocidal intent. By virtue of his responsibility for POW related matters, the Accused was surely aware of what had happened to the Bosnian Muslim males from Srebrenica, namely their murders. He was determined to obscure the murders of an unspeakably massive scale committed by members of the Bosnian Serb Forces even after the end of war.[4484] The Majority, Judge Nyambe dissenting, has no doubt that, in light of the evidence above, that the Accused had knowledge that the murder operation was being carried out with genocidal intent.

4478 *See supra* para. 1128.
4479 *See supra* paras. 1077–1095, 1097–1098, 1110–1114.
4480 *See supra* para. 915; Ex. P01029, 01:49:30–01:49:40, 02:27:47–02:28:02, pp. 6–7, 17 (Video of New Year's party in 1996, with a speech by Mladić, thanking his generals, including the Accused).
4481 *See supra* paras. 92–93, 605–673, 934–1001.
4482 *See supra* para. 921.
4483 *See supra* paras. 1103–1128.
4484 *See supra* para. 1114.

1167. The Majority recalls the Prosecution's submission that the Accused's genocidal intent is demonstrated in his fostering a culture of ethnic hatred and disregard for human life, which contributes to the "zeal and force behind the oversight and implementation of the Srebrenica Genocide".[4485] The Prosecution makes two arguments in support.[4486]

1168. First, the Prosecution argues that the Accused not only permitted the pervasive use of derogatory and dehumanising language within his Sector, but was personally using these terms to refer to Bosnian Muslims or Croats even in communications with the RS President and Prime Minister.[4487] Indeed, the evidence the Prosecution points to as the basis for its allegation shows that the Accused used derogatory and dehumanising terms, such as "Turks" or "Balijas" to refer to Bosnian Muslims.[4488] In one order approving a POW exchange, the Accused says they have "54 Turks" captive.[4489] In another written opinion relating to POW exchanges, the Accused talks of exchanges with the "balija".[4490] Also, in an intercepted communication about mediating with the ABiH, the Accused repeatedly calls them "the Turks".[4491] His immediate subordinates, such as Beara[4492] and Popović, also freely used such derogatory terms with the Accused and the broader VRS Main Staff.[4493] More specifically, prior to the third Hotel Fontana meeting held on the morning of 12 July, discussing an agreement reached to separate the men of military age between 16 and 60 in Potočari and detain them in Bratunac, Popović told Momir Nikolić that "all the Balijas should be killed".[4494] On 13 July, in an intercepted conversation with Lučić, the Deputy Commander of the MP Battalion of the 65th Protection Regiment, Beara stated that "400 Balijas have shown up in Konjević Polje. [...] Shove them all on the playground, who gives a fuck about them".[4495]

4485 Prosecution Final Brief, paras. 78–79 (quotation at para. 79).

4486 The Prosecution's third argument is that the Accused's "complete lack of humanity and utter contempt for human life" is demonstrated when he proposed the endangering of UN hostages on 27 May 1995, referring to Exhibit P02140. Prosecution Final Brief, paras. 79, 86–87. Given that the protected group was the Bosnian Muslim population of Eastern BiH, the Chamber gives no consideration to this argument.

4487 Prosecution Final Brief, para. 80. *See also* Prosecution Final Brief, paras. 78–79.

4488 *See, e.g.*, Ex. P02485, p. 1; Ex. P02274, p. 1; Ex. P00371a; Ex. P02156; Ex. P02468. The Prosecution submitted that the Accused also refered to Bosnian Croats derogatorily as "Ustashas". Prosecution Final Trial Brief, para. 80. *See also e.g.*, Ex. P00510, p. 3; Ex. P02274, p. 1; Ex. P02512, p. 3; Ex. P02105, p. 38; Ex. P01407, pp. 276, 304. However, the Accused is not charged with any crimes relating to the Bosnian Croats, so the Chamber does not consider this any further.

4489 Ex. P02485, p. 1.

4490 Ex. P02274, p. 1.

4491 Ex. P00371a.

4492 *See, e.g.*, Ex. P02256, p. 1 (Report from Beara to the Accused personally dated 14 August 1995, in which Beara used the term "Balijas"); Ex. P02273; Ex. D00279.

4493 *E.g.*, Ex. P02069 (Report to the VRS Main Staff, Sector for Intelligence and Security Affairs, Security Administration, Drina Corps Command and its Security Department, dated 12 July and signed by Popović, in which Popović used the terms "Balijas" and "Turks").

4494 *See supra* para. 257.

4495 Ex. P00663a. *See also supra* para. 320.

1169. When asked "what kind of message" a high ranking military officer sends to the lower command by the use of derogatory terms in referring to the enemy, Butler stated that subordinates understand that this kind of behaviour is tolerated and they are allowed to behave in the same way.[4496] Butler testified that the use of a derogatory term such as "Turks"[4497] is generally not an acceptable practice in the military.[4498] The Majority considers that the Accused encouraged the use of derogatory terms so as to provoke ethnic hatred among members of the Bosnian Serb Forces and an attitude that Bosnian Muslims were human beings of a lesser value, with a view to eradicate this particular group of the population from the Eastern BiH.

1170. Second, the Prosecution contends that the Accused's "complete lack of humanity and utter contempt for human life" is exhibited in his report concerning the situation in Žepa dated 21 July, in which he proposed to Miletić that "we could force Muslims to surrender sooner if we *destroyed* groups of Muslim refugees fleeing from the direction of Stublić, Radava, and Brloška Planina" and that the "best way to destroy them would be by using chemical weapons or aerosol grenades or bombs".[4499] It submits that this document demonstrates the Accused's accurate and truthful proposal to destroy fleeing groups of civilians so as to force the ABiH to surrender;[4500] and that "if Tolimir was able to propose the destruction of the women and children fleeing their homes in Žepa, this Trial Chamber can reasonably infer that Tolimir had no qualms about assisting Mladić in monitoring, organising, and implementing the summary execution of potential Muslim soldiers".[4501]

1171. The Majority has found that this document is relevant as a demonstration of the Accused's state of mind during the forcible removal operation of the civilian population in Žepa and his full knowledge of the predicament of this vulnerable population.[4502] As has also been found by the Majority, by 14 July the Accused had knowledge of the Bosnian Muslim population of Žepa taking refuge outside of inhabited areas.[4503] The Accused's proposal to destroy "groups of Muslim refugees" with a view to force the ABiH to surrender can only be viewed as evidencing his fervent and tactical intention to remove the Bosnian Muslim population from the Žepa enclave, as part of contributing to the JCE to Forcibly Remove. Taking into consideration the context in which the Accused sent this report and its meaning, as detailed elsewhere,[4504] the only reasonable inference to

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4496 Richard Butler, T. 16344 (8 July 2011).
4497 Ex. P02485, p. 1.
4498 Richard Butler, T. 16344 (8 July 2011).
4499 Prosecution Final Brief, para. 81; Ex. P00488. *See also* Prosecution Closing Argument, T. 19375–19378 (21 August 2012).
4500 Prosecution Final Brief, para. 84.
4501 Prosecution Final Brief, para. 88. *See also* Prosecution Closing Argument, T. 19378 (21 August 2012) (stating that the fact that the Accused is able to target civilians—women and children—provides a clear indication that he "is capable of leading an operation to murder the able-bodied men of Srebrenica").
4502 *See supra* para. 1091.
4503 *See supra* para. 1091.
4504 *See supra* para. 1091.

be drawn by the Majority is that this document manifests the Accused's determination to destroy the Bosnian Muslim population. By this time, the Bosnian Muslim population had been forcibly moved out of Potočari, resulting in serious bodily and mental harm; the Accused was deeply involved in covering up the murder operation that was carried out with genocidal intent and in preparing the forced movement of the Bosnian Muslim population of Žepa.

1172. The Majority recalls that the stringent requirement of specific intent derives from the fact that the crime of genocide is one of the worst crimes known to humankind and that conviction for this crime "can be entered only where that intent has been unequivocally established."[4505] In view of the facts that in his position as Chief of the Sector for Intelligence and Security Affairs the Accused had knowledge of the large-scale criminal operations on the ground, that he knew of the genocidal intentions of the JCE members, that he actively contributed to the JCEs to Forcibly Remove and to Murder, that the Accused freely used derogatory and dehumanising language, and that the Accused proposed to destroy groups of fleeing refugees, the only reasonable inference that the Majority can draw on the totality of the evidence is that the Accused possessed genocidal intent. The Majority, Judge Nyambe dissenting, therefore finds that the Accused is criminally responsible for committing the crime of genocide through his participation in the JCE to Murder and the JCE to Forcibly Remove.

1173. Having found that the Accused possessed genocidal intent, the Majority now turns to determine whether it was foreseeable to the Accused that the targeted killings of the three Muslim leaders of Žepa were committed. It has already been established that Bosnian Serb Forces killed these men with genocidal intent. As stated in the law, it is not necessary for the Accused to possess genocidal intent for an extended crime,[4506] but it has to be shown that it was reasonably foreseeable to him that an act specified in Article 4(2) would be committed and that it would be committed with genocidal intent.[4507] Taking into account that the Accused possessed genocidal intent, the Majority is satisfied beyond reasonable doubt that it was reasonably foreseeable to the Accused that the targeted killings would be committed with genocidal intent as a consequence of the agreed enterprise, namely, the JCE to Forcibly Remove and that by participating in the JCE he willingly took the risk. The Majority therefore finds that the Accused is responsible for the crime of genocide pursuant to the third category JCE liability.

1174. The Majority recalls the Prosecution's submission that the Accused also planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of the crime of

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4505 *Krstić* Appeal Judgement, para. 134.
4506 *See supra* para. 898.
4507 *Brđanin* March 2004 Interlocutory Appeal Decision, para. 6.

genocide.[4508] Considering these different modes of liability, the Majority is of the view that, in total, the Accused's actions and omissions are best characterised as "commission" by his participation in the JCE to Forcibly Remove and in the JCE to Murder. Therefore, the Majority will not enter convictions on the alternate modes of liability charged.[4509]

2. Count 2: Conspiracy to Commit Genocide

1175. The Majority has found that by the morning of 12 July 1995 a plan to murder the able-bodied Bosnian Muslim males from Srebrenica existed and that there existed an agreement between two or more persons to commit genocide.[4510] Based on this, the Chamber has been satisfied beyond reasonable doubt that the crime of conspiracy to commit genocide has been established.

1176. The Majority has found that the Accused's genocidal intent has been proven beyond reasonable doubt. It has also found that at the latest by the afternoon of 13 July, the Accused had knowledge of the murder operation, and he was actively engaged in concealing the murder operation, which was part of his significant contribution to the JCE to Murder. Moreover, his failure to protect the Bosnian Muslim prisoners was a deliberate inaction with a view to assist the common purpose shared with the other JCE members, resulting in the commission of the crime of genocide. On this basis, the Majority, Judge Nyambe dissenting, finds beyond reasonable doubt that the Accused is criminally responsible for conspiracy to commit genocide under Article 4(3)(b) of the Statute.

3. Preliminary Requirements for a Crime under Article 5 Relating to the Knowledge and Acts of an Accused

1177. It has been established that there was a widespread and systematic attack directed at the Bosnian Muslim civilian populations of the Srebrenica and Žepa enclaves, which are the first three general requirements for crimes against humanity.[4511] The Chamber will now examine whether the two remaining requirements are present—whether the Accused had the knowledge that there was a widespread and systematic attack against the civilian population and whether his acts comprised part of that attack.[4512]

4508 Indictment, para. 66; Prosecution Final Brief, paras. 950, 953, 956. 957.

4509 It is established in the jurisprudence of the Tribunal that if a Chamber opts to convict an accused for the commission of a crime, the Chamber may consider any involvement in the ordering, instigating, or planning of the crime as an aggravating factor in sentencing and that, however, an accused cannot be convicted for a crime through more than one form of responsibility in relation to the same conduct. *See, e.g.*, *Milutinović et al.* Trial Judgement, Vol. I, para. 77; *Brdanin* Trial Judgement, para. 268; *Stakić* Trial Judgement, para. 443.

4510 *See supra* paras. 790–791.

4511 *See supra* paras. 701–710.

4512 *See supra* para. 700.

1178. The Accused was present when the Six Strategic Objectives of the RS were discussed at the 16th Session of the National Assembly on 12 May 1992, calling for the ethnic separation of Serbs and Muslims.[4513] He had knowledge of Operative Directive 4 issued by his superior, Mladić, which had as one of its goals the removal of the civilian populations out of the Birač, Žepa and Goražde areas.[4514] The Accused's Sector contributed to the drafting of Directive 7,[4515] and he was aware that there was a plan to create conditions for ethnically cleansing the eastern enclaves of their Bosnian Muslim population.[4516] He also had knowledge of Operation Krivaja 95, the aim of which was "to split apart the enclaves of Žepa and Srebrenica and to reduce them to their urban areas", pursuant to Directives 7 and 7/1.[4517] Moreover, in the Majority's view, the Accused's significant contributions to the JCE to Forcibly Remove and to the JCE to Murder demonstrate that his acts were part of this widespread and systematic attack against the Bosnian Muslim civilian population, that is to say, to drive them out from the enclaves.

1179. In conclusion, the Majority finds beyond reasonable doubt that the Accused had knowledge that there was an attack against the Bosnian Muslim civilian population and his acts were tied to the attack. Therefore the Majority, Judge Nyambe dissenting, concludes that the two remaining general elements for a crime against humanity have been met.

4. Count 3: Extermination

1180. The Chamber has found that a single deliberate, organised, and large-scale operation to murder Bosnian Muslim males existed with the requisite intent to kill on a massive scale, thus amounting to the crime of extermination.[4518]

1181. The Majority has found that as a member of the JCE to Murder, at the latest by the afternoon of 13 July, the Accused had knowledge of the extensive scale and scope of the murder operation. That afternoon, the Accused proposed the measures to remove a number of Bosnian Muslims held in the Nova Kasaba Football Field and detain them indoors or in a protected area to prevent their detection.[4519] From then onwards, the Accused was actively engaged in concealing the ongoing murder operation.[4520] This cover-up continued up to 1997.[4521] Moreover, his intentional failure to protect the Bosnian Muslim prisoners facilitated the commission of the murders on a

4513 *See supra* para. 162.
4514 *See supra* para. 1077.
4515 *See supra* para. 186.
4516 *See supra* para. 1078.
4517 *See supra* paras. 215–217 (noting that a copy of the second order was sent to the VRS Main Staff).
4518 *See supra* paras. 727–729.
4519 *See supra* paras. 1103–1104.
4520 *See supra* paras. 1105–1114.
4521 *See supra* para. 1114.

massive scale.[4522] His conscious and deliberate support of the nefarious objective pursued by the JCE to Murder, as shown by his meticulous and consistent conduct intended to contribute to the achievement of the goals of the JCE to Murder, demonstrates that the Accused had the required intent of the crime of extermination through his participation in the JCE to Murder. Therefore, the Majority, Judge Nyambe dissenting, finds beyond reasonable doubt that the Accused is responsible for the crime of extermination.

1182. The Majority recalls the Prosecution's submission that the Accused also planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of the crime of extermination.[4523] Considering these different modes of liability, the Majority is of the view that, in total, the Accused's actions and omissions are best characterised as "commission" by his participation in the JCE to Forcibly Remove and in the JCE to Murder. Therefore, the Majority will not enter convictions on the alternate modes of liability charged.

1183. In conclusion, the Majority, Judge Nyambe dissenting, finds beyond reasonable doubt that the Accused is responsible for committing the crime of extermination as a crime against humanity under Article 5(b) of the Statute.

5. Counts 4 and 5: Murder

1184. The Majority, Judge Nyambe dissenting, has found that Bosnian Serb Forces murdered at least 4,970 Bosnian Muslims after the fall of Srebrenica and three Bosnian Muslims after the fall of Žepa, amounting to the crime of murder under Articles 3 and 5.[4524]

1185. The Majority, Judge Nyambe dissenting, has found that the Accused was a member of the JCE to Murder, the common purpose of which was to murder the able-bodied Bosnian Muslim males of the Srebrenica enclave, and he shared this murderous intent with other members of the JCE and significantly contributed to the common purpose.[4525] That the Accused had the requisite intent to murder that group has also been proven in the context of the findings of his participation in the JCE to Murder.[4526] The Majority has also found that the Accused is criminally responsible for the "opportunistic" killing of one man in Potočari and the targeted killings of the three Bosnian Muslim leaders in Žepa through his membership in the JCE to Forcibly Remove, as well as other opportunistic killings (limited to the killings that occurred in the night of 13 July and in the early

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4522 *See supra* paras. 1116–1128.
4523 Indictment, para. 66; Prosecution Final Brief, paras. 950, 953, 956, 957.
4524 *See supra* paras. 718–721.
4525 *See supra* paras. 1099–1129.
4526 *See supra* paras. 1103–1129.

morning of 14 July) through his membership in the JCE to Murder.[4527] The Majority, Judge Nyambe dissenting, therefore finds that the Accused is criminally responsible for the crime of murder, including the "opportunistic" killings and the targeted killings as previously found.

1186. The Majority recalls the Prosecution's submission that the Accused also planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of the crime of murder.[4528] In particular, the Prosecution asserts that due to the Accused's and his subordinates' involvement in the capture, detention, and disappearance of the three Muslim leaders of Žepa, the Accused authorised and aided and abetted the killings.[4529] Considering these different modes of liability, the Majority is of the view that the totality of the Accused's conduct and omissions is best characterised as "commission" by his participation in the JCE to Murder. Therefore, the Majority will not enter convictions on the alternate modes of liability charged.

1187. In conclusion, the Majority, Judge Nyambe dissenting, finds beyond reasonable doubt that the Accused is criminally responsible for committing the crime of murder as a violation of the laws or customs of war and a crime against humanity pursuant to Articles 3 and 5(a) of the Statute.

6. Count 6: Persecutions

1188. The Majority, Judge Nyambe dissenting in part, has found that the murders of the able-bodied Bosnian Muslim males, the cruel and inhumane treatment of the Bosnian Muslim population, the terrorisation of the civilian population, the destruction of homes of the Bosnian Muslims in Srebrenica and Žepa,[4530] and the forced removal of women, children, and elderly out of the enclaves were all committed with discriminatory intent, amounting to the crime of persecutions.[4531]

1189. The jurisprudence of the Tribunal indicates that the Accused's discriminatory intent, namely, the intent to discriminate on political, racial, or religious grounds, could be inferred from circumstances, including the systematic nature of crimes committed against the targeted group, as well as his general attitude as demonstrated by his behaviour.[4532]

1190. The Majority finds that as a member of the JCE to Murder, the Accused acted and failed to act in furtherance of the common purpose to kill the able-bodied Bosnian Muslim males from Srebrenica, who were subjected to appalling inhumane treatment during their brief detentions prior

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4527 *See supra* paras. 1144, 1154.
4528 Indictment, para. 66; Prosecution Final Brief, paras. 950, 953–954, 956–957.
4529 Prosecution Final Brief, paras. 955, 958; Prosecution Closing Argument, T. 19436 (21 August 2012).
4530 *See supra* paras. 861–878, 882.
4531 *See supra* paras. 879–882.

to being summarily murdered. His pervasive involvement in the effort to conceal the murder operation, coupled with his failure to protect the Bosnian Muslim prisoners, resulted in the realisation of these goals.[4533] As a member of the JCE to Forcibly Remove, the common purpose of which was to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves, the Accused knew that the Bosnian Muslim population was specifically targeted.[4534] With full knowledge of the plans developed by the RS political and military leadership to wipe out the Bosnian Muslim populations from Srebrenica and Žepa enclaves, as particularly indicated in Directives 7 and 7/1, the Accused was aware, through his subordinate officers of the security and intelligence organs, of the events on the ground in Potočari, where the busing of the Bosnian Muslim population was under way. His involvement in the events in Žepa led to significant contributions to the execution of the criminal objective—to remove this specific ethnic group—Bosnian Muslims. The evidence above demonstrates that the Accused participated in both JCEs with the discriminatory intent.

1191. It has already been found by the Majority that through his membership in the JCE to Forcibly Remove and in the JCE to Murder, it was reasonably foreseeable to the Accused that persecutory acts would be committed.[4535] In addition, the Majority finds that it was foreseeable to the Accused, through his membership in the JCE to Forcibly Remove, that the targeted killings in Žepa would be committed with discriminatory intent. The Majority therefore finds beyond reasonable doubt that the Accused is responsible for the crime of persecutions, including the "opportunistic" killings as previously found[4536] and the foreseeable targeted killings.

1192. The Majority recalls the Prosecution's submission that the Accused also planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of the crime of persecutions.[4537] Considering these different modes of liability, the Majority is of the view that, in total, the Accused's actions and omissions are best characterised as "commission" by his participation in the JCE to Forcibly Remove and in the JCE to Murder. Therefore, the Majority will not enter convictions on the alternate modes of liability charged.

1193. In conclusion, the Majority, Judge Nyambe dissenting, finds beyond reasonable doubt that the Accused is responsible for committing the crime of persecutions under Article 5(h).

4532 *See supra* paras. 849–850.
4533 *See supra* paras. 1103–1128.
4534 *See supra* paras. 1077–1095.
4535 *See supra* para. 1144.
4536 *See supra* para. 1114.
4537 Indictment, para. 66; Prosecution Final Brief, paras. 950–959.

7. Count 7: Inhumane Acts—Forcible Transfer

1194. The Majority has found that the movement of approximately 25,000–30,000 Bosnian Muslims out of Potočari on 12 and 13 July 1995 and nearly 4,400 Bosnian Muslims out of Žepa on 25–27 July 1995 by the Bosnian Serb Forces constituted crimes of forcible transfer as inhumane acts.[4538] However, it has been found that the transportation of Bosnian Muslim males to Bratunac and Zvornik did not constitute forcible transfer.[4539]

1195. As previously established by Majority, the Accused was a member of the JCE to Forcibly Remove, the common purpose of which was to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves; he shared the intent with other members of the JCE, and he significantly contributed to the realisation of the common purpose.[4540] That the Accused possessed the requisite intent to forcibly displace the population within a natural border has also been proven in the context of the findings of his participation in the JCE to Forcibly Remove. On this basis, the Majority finds that the Accused is criminally responsible for forcible transfer as a crime against humanity under Article 5(i) of the Statute through his participation in the JCE to Forcibly Remove.

1196. The Majority recalls the Prosecution's submission that the Accused also planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of the crime of forcible transfer.[4541] Considering these different modes of liability, the Majority is of the view that, in total, the Accused's actions and omissions are best characterised as "commission" by his participation in the JCE to Forcibly Remove and in the JCE to Murder. Therefore, the Majority will not enter convictions on the alternate modes of liability charged.

1197. In conclusion, the Majority, Judge Nyambe dissenting, finds beyond reasonable doubt that the Accused is responsible for committing the crime of forcible transfer as an inhumane act under Article 5(i).

8. Count 8: Deportation

1198. It has been found that the movement of the Bosnian Muslim men from Žepa to Serbia did not constitute the crime of deportation. The Chamber therefore concludes that the Accused is not criminally responsible for deportation as a crime of humanity under Article 5(d) of the Statute.

4538 *See supra* paras. 804–817, 823–833, 842.
4539 *See supra* paras. 818–822, 843.
4540 *See supra* paras. 1077–1095.
4541 Indictment, para. 66; Prosecution Final Brief, paras. 909–912.

IX. CUMULATIVE CONVICTIONS AND RELATED MATTERS

1199. In this section, the Majority will consider where it is permissible to impose simultaneous convictions under multiple provisions of the Statute, and will give particular attention to the jurisprudence covering situations where the conduct underlying multiple convictions is the same.

A. Cumulative Convictions

1200. The Tribunal's jurisprudence on cumulative convictions determines whether a conviction should be entered for multiple crimes when an accused has been charged with more than one crime or under multiple statutory provisions on the basis of the same conduct.[4542] The "*Čelebići* test", which is well-established in the Tribunal's jurisprudence,[4543] governs the issue:

> [M]ultiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.
>
> Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.[4544]

The Majority will now turn to the specific issues of cumulation applicable in the instant case.

1201. An accused may be convicted for the same conduct charged as both a violation of the laws or customs of war under Article 3 and as a crime against humanity under Article 5 because each category of crimes requires proof of distinct elements.[4545] The former requires proof of a close link between the accused's acts and the armed conflict, whereas the latter requires proof of a widespread or systematic attack against a civilian population.[4546] Accordingly, it is permissible to enter convictions for murder as a violation of the laws or customs of war under Article 3 (Count 5), as well as for murder as a crime against humanity under Article 5(a) (Count 4), extermination as a

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4542 *Čelebići* Appeal Judgement, para. 412.

4543 The *Čelebići* test has been reaffirmed by the ICTY and ICTR Appeals Chambers in many subsequent cases. *Milošević* Appeal Judgement, para. 39; *Strugar* Appeal Judgement, paras. 321–333; *Galić* Appeal Judgement, paras. 167–168; *Stakić* Appeal Judgement, paras. 355–359; *Kordić and Čerkez* Appeal Judgement, paras. 1032–1033; *Krstić* Appeal Judgement, para. 218; *Vasiljević* Appeal Judgement, para. 170; *Kupreškić* Appeal Judgement, para. 393; *Jelisić* Appeal Judgement, para. 82; *Nahimana* Appeal Judgement, paras. 1020–1021; *Simba* Appeal Judgement, para. 277; *Ntagerura et al.* Appeal Judgement, para. 425; *Semanza* Appeal Judgement, para. 319; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 542; *Rutaganda* Appeal Judgement, para. 583.

4544 *Čelebići* Appeal Judgement, paras. 412–413.

4545 *Galić* Appeal Judgement, para. 165; *Kunarac et al.* Appeal Judgement, para. 176; *Kordić and Čerkez* Appeal Judgement, para. 1036; *Jelisić* Appeal Judgement, para. 82; *Popović et al.* Trial Judgement, para. 2112; *Đorđević* Trial Judgement, para. 2201; *Gotovina et al.* Trial Judgement, Vol. 2, para. 2591; *Perišić* Trial Judgement, para. 1788.

4546 *Galić* Appeal Judgement, para. 165; *Jelisić* Appeal Judgement, para. 82; *Perišić* Trial Judgement, para. 1788.

crime against humanity under Article 5(b) (Count 3), or for murder as an underlying act of persecution under Article 5(h) (Count 6).

1202. In considering whether *intra*-Article 5 convictions are permissible, the Appeals Chamber has held that a Trial Chamber must conduct an "examination, as a matter of law, of the elements of each offence in the Statute that pertain to that conduct for which the accused has been convicted".[4547] Under this rubric, it has been held permissible for a Trial Chamber to convict an accused for persecution pursuant to Article 5(h) as well as for another crime against humanity under Article 5 on the basis of the same conduct. For example, persecution requires proof that an act or omission discriminates in fact and that the act or omission was committed with specific intent to discriminate, while murder requires proof that the accused caused a victim's death.[4548] Extermination as a crime against humanity under Article 5(b) requires proof of killing on a large scale.[4549] Therefore, convictions for both persecution pursuant to Article 5(h) and murder under Article 5(a), as well as for both persecution and extermination as a crime against humanity under Article 5(b) are permissibly cumulative.[4550]

1203. Similarly, it is permissible to enter convictions for forcible transfer as an "other inhumane act" under Article 5(i) and forcible transfer as a persecutory act under Article 5(h).[4551] As the Chamber has previously stated, forcible transfer as an "other inhumane act" under Article 5(i) requires, *inter alia*, a finding that the act or omission concerned caused serious mental or physical suffering or injury or is a serious attack on human dignity,[4552] but not that it was committed with discriminatory intent. Forcible transfer as a persecutory act under Article 5(h), on the other hand, does not require serious mental or physical suffering or injury or an attack on human dignity, but that the acts or omissions were committed with discriminatory intent.[4553] Accordingly, these charges are not impermissibly cumulative because each provision requires a material element not required by the other.[4554]

1204. Entering convictions for murder as a crime against humanity under Article 5(a) and for extermination as a crime against humanity under Article 5(b), however, would be impermissibly

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4547 *Kordić and Čerkez* Appeal Judgement, para. 1040 (adding that what is to be considered is "whether each offence has an element that requires proof of a fact not required by the other offence").

4548 *Krajišnik* Appeal Judgement, para. 391; *Kordić and Čerkez* Appeal Judgement, para. 1041; *Stakić* Appeal Judgement, para. 359.

4549 *See supra* para. 723.

4550 *Krajišnik* Appeal Judgement, paras. 390–391; *Popović et al.* Trial Judgement, para. 2113.

4551 *Krajišnik* Appeal Judgement, paras. 390–391; *Đorđević* Judgement, para. 2198; *Popović et al.* Trial Judgement, para. 2113.

4552 *See supra* para. 802.

4553 *See supra* paras. 849–850.

4554 *Krajišnik* Appeal Judgement, paras. 390–391; *Đorđević* Trial Judgement, para. 2198; *Popović et al.* Trial Judgement, para. 2113.

cumulative.[4555] As both crimes involve killing within the context of a widespread and systematic attack against a civilian population, the only distinguishing element between them is that extermination requires that the killings occurred on a large scale.[4556] Accordingly, the Majority, Judge Nyambe dissenting, will enter a conviction under the more specific provision, Article 5(b).

1205. It is permissible to enter simultaneous convictions for genocide under Article 4(3)(a) as well as a conviction for any crime under Article 5, or a conviction for murder under Article 3.[4557] Genocide under Article 4(3)(a) requires the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.[4558] A conviction for crimes against humanity under Article 5 requires a finding of a widespread or systematic attack against any civilian population, while a conviction under Article 3 requires proof of a close link between the acts of the accused and the armed conflict.[4559] Therefore, a conviction for genocide under Article 4(3)(a) may be entered along with any crime under Article 5, as well as for murder under Article 3.[4560] Similarly, the element of genocidal intent distinguishes a conviction for conspiracy to commit genocide from convictions under both Articles 3 and 5.[4561]

B. Related Matters

1206. Turning to the propriety of entering convictions for both genocide and conspiracy to commit genocide, the Majority observes that although the evidence supporting both convictions is largely the same,[4562] the Majority has found that the Accused significantly contributed to the JCE to murder,[4563] and that he did so with genocidal intent.[4564] On this basis, the Majority has inferred that the Accused acceded to an agreement to commit genocide.[4565] While the Majority's finding that the Accused committed acts enumerated under Article 4(2) of the Statute sustains the genocide conviction,[4566] it is the finding that the Accused entered into an agreement to commit genocide that

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4555 *Stakić* Appeal Judgement, para. 366; *Popović et al.* Trial Judgement, para. 2114; *Lukić and Lukić* Trial Judgement, para. 1045. *See also Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 542.
4556 *Popović et al.* Trial Judgement, para. 2114.
4557 *Krstić* Appeal Judgement, paras. 222–227; *Popović et al.* Trial Judgement, paras. 2115–2116; *Krstić* Trial Judgement, para. 681. *See also Musema* Appeal Judgement, paras. 366–367; *Nahimana et al.* Appeal Judgement, para. 1029.
4558 *See supra* para. 744.
4559 *See supra* paras. 683, 692.
4560 *Krstić* Appeal Judgement, paras. 222–227; *Popović et al.* Trial Judgement, paras. 2115–2116; *Semanza* Appeal Judgement, para. 318; *Ntagerura et al.* Appeal Judgement, para. 426.
4561 *Popović et al.* Trial Judgement, para. 2117.
4562 *See supra* paras. 1162–1172.
4563 *See supra* para. 1129.
4564 *See supra* para. 1172.
4565 *See supra* paras. 1175–1176.
4566 *See supra* para. 1172.

underlies the conviction for conspiracy.[4567] It is thus clear that the two convictions are not based upon the same underlying conduct, and that the *Čelebići* test does not govern this question.[4568]

1207. While the Majority acknowledges the existence of some division of opinion on this matter,[4569] the Majority considers that there are multiple reasons to permit simultaneous convictions for genocide and conspiracy to commit genocide. The rationale for criminalising conspiracy to commit genocide involves not only preventing the commission of the substantive offence,[4570] but also punishing the collaborative aspect of the crime, which inherently poses a specific danger regardless of whether the substantive crime is ultimately committed.[4571] The Majority, Judge Nyambe dissenting, is therefore of the view that it is proper to enter convictions for both genocide and conspiracy to commit genocide.

4567 *See supra* paras. 1175–1176.
4568 *Gatete* Appeal Judgement, para. 260; *Popović et al.* Trial Judgement, paras. 2118–2119.
4569 *Popović et al.* Trial Judgement, paras. 2122–2127; *Gatete* Appeal Judgement, Dissenting Opinion of Judge Carmel Agius, paras. 7–8; *Musema* Trial Judgement, para. 198.
4570 *Gatete* Appeal Judgement, para. 262 (citing Ad Hoc Committee on Genocide, Note by the Secretariat, Economic and Social Council, E/AC.25/3, 2 April 1948, p. 8).
4571 *Gatete* Appeal Judgement, para. 262 (referring to the travaux préparatoires of the Genocide Convention and the Ad Hoc Committee on Genocide, Report of the Committee and Draft Convention Drawn up by the Committee, Economic and Social Council, 7/794, 24 May 1948, p. 20).

X. SENTENCING CONSIDERATIONS

1208. The Prosecution submitted that the Accused should receive a life sentence, pursuant to Article 24 of the Statute and Rule 101 of the Rules.[4572] The Accused has submitted that he should be acquitted on all counts of the Indictment and thus made no submission on sentencing.[4573]

A. Principles and Purposes of Punishment

1209. The primary purposes of sentencing for crimes within the jurisdiction recognised in the jurisprudence of the Tribunal are retribution and deterrence.[4574] Retribution is not to be understood as a desire for revenge but as an expression of the outrage of the international community towards these crimes.[4575] Furthermore, it reflects a position of the international community that crimes will be punished and impunity will not prevail.[4576]

1210. Deterrence—individual and general—serves as an important goal for sentencing.[4577] Individual deterrence aims at discouraging the convicted person from committing future violations, while general deterrence has a dissuading effect on other potential perpetrators from committing the same or similar crimes.[4578] This sentencing factor, however, should not be given undue prominence in assessing a sentence.[4579]

1211. Lastly, rehabilitation is a relevant factor to be considered.[4580] In the light of the gravity of the crimes falling under the Tribunal's jurisdiction, however, the weight of this factor may be limited and such assessment should be made on a case-by-case basis.[4581]

B. Applicable Law on Sentencing and its Factors

1212. Sentencing is governed by Articles 23 and 24 of the Statute and Rules 101 to 106 of the Rules. In particular, Article 24(1) provides that "the penalty imposed by the Trial Chamber shall be limited to imprisonment" and Rule 101(A) states that a convicted person may be sentenced to imprisonment for a maximum term of life.

4572 Prosecution Final Brief, paras. 960–963; Prosecution Closing Argument, T. 19458–19459 (21 August 2012).
4573 Accused Final Brief, para. 1; Accused Closing Argument, T. 19544 (23 August 2012).
4574 *Bikindi* Appeal Judgement, para. 198; *Mrkšić and Šljivančanin* Appeal Judgement, para. 415; *Čelebići* Appeal Judgement, para. 806; *Popović et al.* Trial Judgement, para. 2128.
4575 *Aleksovski* Appeal Judgement, para. 185; *Krajišnik* Appeal Judgement, para. 804; *Kordić and Čerkez* Appeal Judgement, para. 1075.
4576 *Blagojević and Jokić* Trial Judgement, para. 819.
4577 *Krajišnik* Appeal Judgement, para. 805; *Kordić and Čerkez* Appeal Judgement, para. 1076.
4578 *Krajišnik* Appeal Judgement, para. 805; *Kordić and Čerkez* Appeal Judgement, para. 1077–1078.
4579 *Tadić* Sentencing Appeal Judgement, para. 48; *Krajišnik* Appeal Judgement, para. 805; *Kordić and Čerkez* Appeal Judgement, para. 1078.
4580 *Krajišnik* Appeal Judgement, para. 806; *Čelebići* Appeal Judgement, para. 806.
4581 *Krajišnik* Appeal Judgement, para. 806; *Čelebići* Appeal Judgement, para. 806.

1213. In imposing a sentence, the Majority shall have regard to the following factors mentioned in Article 24(2) and Rule 101(B), which are, however, not exhaustive: (1) the gravity of the offence or totality of the culpable conduct;[4582] (2) the individual circumstances of the convicted person, including aggravating and mitigating circumstances;[4583] (3) the general practice regarding prison sentences in the courts of the former Yugoslavia;[4584] (4) the extent to which any penalty imposed by a court of the State of the convicted person for the same act has already been served;[4585] and (5) the credit to be given for any time spent in detention pending surrender to the Tribunal or pending trial.[4586] Trial Chambers are vested with a broad discretion in determining an appropriate sentence.[4587]

1214. Furthermore, the Majority is to take into account the prior practice of the Tribunal regarding sentencing in respect of the crimes for which the accused is convicted.[4588] While such sentencing practice may serve as guidance for the Majority, it can only be one of the factors to be taken into account when determining a sentence because (1) comparisons between sentences can only be undertaken when the same offences are committed in substantially similar circumstances; and (2) each Chamber has the primary obligation to tailor a penalty in light of the individual circumstances of the accused and the gravity of the crime.[4589]

1. The Gravity of the Offence

1215. In assessing the gravity of the offence, which is a factor of primary importance,[4590] the Majority must consider the inherent seriousness of the crime and the totality of the criminal conduct of the convicted person in light of the particular circumstances of the case, as well as the form and degree of participation of the convicted person.[4591] Relevant factors the Majority may consider in this regard include the nature of the offences; the scale and brutality of the crimes; the convicted person's position of authority and the overall impact of the crime upon the victims and their

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4582 Article 24(2) of the Statute.
4583 Article 24(2) of the Statute; Rule 101(B)(i)-(ii) of the Rules.
4584 Article 24(1) of the Statute; Rule 101(B)(iii) of the Rules.
4585 Rule 101(B)(iv) of the Rules, referring to Article 10(3) of the Statute.
4586 Rule 101(C) of the Rules. *See also Boškoski and Tarčulovski* Appeal Judgement, para. 203; *Krajišnik* Appeal Judgement, para. 733; *Blagojević and Jokić* Appeal Judgement, para. 320.
4587 *Kalimanzira* Appeal Judgement, para. 224; *Boškoski and Tarčulovski* Appeal Judgement, para. 204; *Milošević* Appeal Judgement, para. 297.
4588 *See infra* para. 1236. *See also Popović et al.* Trial Judgement, paras. 2132–2133; *Lukić and Lukić* Trial Judgement, para. 1048; *Jelišić* Trial Judgement, para. 115.
4589 *Mrkšić and Šljivančanin* Appeal Judgement, paras. 375–376; *Strugar* Appeal Judgement, para. 348; *Blagojević and Jokić* Appeal Judgement, para. 333; *Čelebići* Appeal Judgement, paras. 717, 720, 821.
4590 *Čelebići* Appeal Judgement, para. 731; *Gotovina et al* Trial Judgement, para. 2599; *Mrkšić and Šljivančanin* Appeal Judgement, para. 375.
4591 *Mrkšić and Šljivančanin* Appeal Judgement, para. 375, 407; *Martić* Appeal Judgement, para. 350; *Galić* Appeal Judgement, para. 409.

relatives.[4592] If a factor is taken into account by the Majority in assessing the gravity of the crimes, then the same factor should not be additionally considered as an aggravating circumstance, and *vice versa*.[4593]

1216. The Majority found the Accused criminally responsible for committing the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, and forcible transfer through his participation in the JCE to Forcibly Remove and the JCE to Murder.[4594] In particular, the deliberate and calculated physical destruction of the Bosnian Muslim population of Eastern BiH amounts to one of the worst crimes known to humankind—the crime of genocide.[4595] The Majority found elsewhere that the extreme magnitude and scale of the crimes committed could only have been achieved by an organised, interconnected military structure working in unison. Within a very short period of time, the plan of ethnic separation had been implemented successfully. The Majority found, that approximately 25,000–30,000 Bosnian Muslims were forcibly removed from Potočari towards Kladanj in an operation organised by the VRS leadership within only a few days.[4596] Members of Bosnian Serb Forces systematically separated Bosnian Muslim men from the crowd thereby instilling fear and grief among the people.[4597] Similarly, with regard to Žepa, the Majority found that nearly 4,400 Bosnian Muslims were forcibly bussed out of Žepa over a period of only three days, in accordance with the orchestrated operation.[4598]

1217. As a result of the massive and cruel murder operation, the Majority found that at least 5,749 Bosnian Muslim males from Srebrenica were systematically murdered by Bosnian Serb Forces within a period of only several days.[4599] Bosnian Serb Forces committed these crimes with the repugnant intent to discriminate and destroy this particular group. The Chamber heard evidence of horrific mass executions from survivors who managed to crawl out of piles of dead bodies, as well as evidence of men who were detained under unspeakably inhumane conditions, mistreated and tortured, knowing that all that is left for them to expect from life is to simply await their death. Not only did the Chamber hear evidence of adult men being shot to death, it also recalls the heart-

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4592 *Blaškić* Appeal Judgement, para. 683; *Mrkšić and Šljivančanin* Appeal Judgement, paras. 400–411; *Popović et al.* Trial Judgement, para. 2134; *Boškoski and Tarčulovski* Trial Judgement, para. 588; *Orić* Trial Judgement, para. 729; *Galić* Appeal Judgement, para. 410; *Kunarac et al.* Appeal Judgement, para. 352; *Krnojelac* Appeal Jugdement, para. 260; *Strugar* Appeal Judgement, para. 353; *Naletilić and Martinović* Appeal Judgement, paras. 609–613, 625–626. Crimes of genocide and persecutions warrant special attention in considering the gravity of the crimes. *See Blagojević and Jokić* Appeal Judgement, para. 139.

4593 *Krajišnik* Appeal Judgement, para. 787; *Naletilić and Martinović* Appeal Judgement, paras. 610–613; *Milošević* Appeal Judgement, paras. 306–310. Accordingly, the Majority will discuss the Accused's position of authority in the context of aggravating circumstances.

4594 *See supra* Chapter VIII. H.

4595 *See supra* Chapter VIII. H.

4596 *See supra* paras. 304, 1038.

4597 *See supra* Chapter V. B. 4. (b).

4598 *See supra* paras. 649, 709, 842, 1038.

4599 *See supra* paras. 596, 770, 773.

breaking case of an approximately five or six year old boy who survived the execution at Orahovac. The boy, being shot by VRS soldiers, emerged from the pile of dead bodies, covered with bits of other people's bowel, tissue, and blood; and then called out "Baba," meaning father, "where are you?" The boy's father was murdered next to him.[4600] The Majority considers the pattern of large scale brutality used by the VRS to increase the gravity of the offences.

1218. The Chamber also heard evidence of the large number of victims, their patent vulnerability and the long-term physical and psychological suffering of the survivors up until today. The events have left a society in despair, losing its leadership, identity and three generations of Bosnian Muslim men within only a couple of days.[4601] To date most of the Bosnian Muslim women continue to suffer psychological trauma, stress and anxiety,[4602] a syndrome also known as the "Srebrenica Syndrome".[4603] The particular symptoms suffered by the women stem from the uncertainty of their family members' fate and survivor guilt.[4604] Further, the breakdown in family life and the consequential economic, emotional and social impact includes a lack of men to carry forward family names,[4605] next to substantial reductions in living standards.[4606] Most of all, the most vulnerable people of a society, the Bosnian Muslim children, continue to suffer adjustment problems such as low levels of concentration, nightmares, flashbacks, fears, and behavioural problems.[4607] The Majority, in sentencing, considers these irreparable impacts on the victims.

2. Aggravating and Mitigating Circumstances

1219. The Statute and the Rules do not exhaustively define factors which may constitute aggravating or mitigating circumstances, except that any substantial cooperation of the convicted person with the Prosecution is to be considered as a mitigating factor.[4608] It is therefore within the Majority's discretion to decide which factors are aggravating and mitigating circumstances and to

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4600 *See supra* para. 429.

4601 Teufika Ibrahimefendić, T. 10080–1083 (17 February 2011); Teufika Ibrahimefendić, Ex. P01817, KT. 5815–5816, 5830 (27 July 2000). *See also* Mirsada Gabeljić, Ex. P01529 (18 June 2000), p. 4; Behara Krdžić, Ex. P02743 (16 June 2000), pp. 2–3; Šehra Ibišević, Ex. P01526 (21 June 2000), p. 6.

4602 Teufika Ibrahimefendić, T. 10080–10081 (17 February 2011); Teufika Ibrahimefendić, Ex. P01817, KT. 5816–5819 (27 July 2000).

4603 Teufika Ibrahimefendić, Ex. P01817, KT. 5817, 5834 (27 July 2000); Adjudicated Fact 591. *See also* Šifa Hafizović, Ex. P01527 (16 June 2000), pp. 3–4.

4604 Teufika Ibrahimefendić, T. 10078–10079, 10088–10089 (17 February 2011); Teufika Ibrahimefendić, Ex. P01817, KT. 5817–5819, 5841 (27 July 2000); Adjudicated Facts 592, 594. *See also* Hanifa Hafizovic, Ex. P01522 (16 June 2000), pp. 4–5; Rahima Malkić, Ex. P01521 (17 June 2000), p. 4.

4605 Hanifa Hafizović, Ex. P01522 (16 June 2000), p. 3. *See also* Teufika Ibrahimefendić, Ex. P01817, KT. 5830 (27 July 2000).

4606 Šifa Hafizović, Ex. P01527 (16 June 2000), pp. 3–4; Samila Salčinovic, Ex. P01524 (18 June 2000), pp. 3–5; Rahima Malkić, Ex. P01521 (17 June 2000), pp. 3–5.

4607 Teufika Ibrahimefendić, Ex. P01817, KT. 5819–5824, 5832–5833, 5838 (27 July 2000); Mejra Mešanović, Ex. P01525 (19 June 2000), p. 4; Teufika Ibrahimefendić, T. 10081–10082, 10084–10087 (17 February 2011); Adjudicated Facts 589– 590.

4608 Rule 101(B)(ii) of the Rules. *See also Momir Nikolić* Sentencing Appeal Judgement, para. 96.

decide on the weight to be given to them.[4609] However, an element of the crime—for example, the discriminatory intent in the crimes of persecution—cannot be considered an aggravating factor.[4610]

1220. Only circumstances directly related to the commission of the crime charged and to the offender himself at the time that he committed the offence may be considered in aggravation of the sentence.[4611] These aggravating circumstances must be proven beyond reasonable doubt.[4612] In mitigation, circumstances not directly related to the crime can be taken into account.[4613] Unlike aggravating circumstances, mitigating circumstances need only be proven on a balance of probabilities.[4614]

1221. Aggravating circumstances which have been identified in the jurisprudence of the Tribunal include the abuse of the convicted person's superior position of leadership; the duration of the criminal conduct; the active and direct criminal participation under Article 7(1) of the Statute if linked to a high-ranking position of command; premeditation and motive; the informed, willing or enthusiastic participation in the crimes; a discriminatory state of mind where discrimination is not an element of the crimes; the sexual, violent, and humiliating nature of the crimes and the vulnerability and impact on the victims.[4615] The absence of a mitigating factor cannot itself serve as an aggravating factor.[4616]

1222. With regard to the Prosecution's submission on the vulnerability of the victims and the impact of the crimes on them,[4617] the Majority notes that it had already considered this factor in assessing the gravity of the offences,[4618] and hence will not consider it as an aggravating factor.

1223. The Prosecution argues that the Accused abused his authority as a senior general of the VRS Main Staff "despite his obligations to protect captives in the custody of the VRS" and that he

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4609 *Milošević* Appeal Judgement, para. 297; *Mrkšić and Šljivančanin* Appeal Judgement, para. 352; *Brđanin* Appeal Judgement, para. 500; *Blaškić* Appeal Judgement, para. 685; *Bikindi* Appeal Judgement, para. 158.

4610 *Blaškić* Appeal Judgement, para. 693; *Vasiljević* Appeal Judgement, paras. 172–173.

4611 *Simba* Appeal Judgement, para. 82; *Čelebići* Appeal Judgement, paras. 763, 789.

4612 *Blaškić* Appeal Judgement, para. 686; *Čelebići* Appeal Judgement, para. 763; *Kunarac et al.* Trial Judgement, para. 850.

4613 *Popović et al.* Trial Judgement, para. 2137; *Milutinović et al.* Trial Judgement, Vol. III, para. 1150; *Stakić* Trial Judgement, para. 920.

4614 *Hadžihasanović and Kubura* Appeal Judgement, para. 302; *Zelenović* Sentencing Appeal Judgement, para. 11; *Bralo* Sentencing Appeal Judgement, para. 8.

4615 *Blaškić* Appeal Judgement, paras. 686, 694; *Milošević* Appeal Judgement, paras. 302–305; *Martić* Appeal Judgement, paras. 340, 350; *Hadžihasanović and Kubura* Appeal Judgement, paras. 320, 349–353; *Blagojević and Jokić* Appeal Judgement, para. 324; *Krajišnik* Appeal Judgement, para. 814; *Krstić* Appeal Judgement, para. 258; *Jelisić* Appeal Judgement, para. 86; *Kayishema and Ruzindana* Appeal Judgement, para. 351; *Vasiljević* Appeal Judgement, paras. 172–173; *Kunarac et al.* Appeal Judgement, para. 357; *Popović et al.* Trial Judgement, para. 2139; *Milutinović et al.* Trial Judgement, Vol. III, para. 1151; *Čelebići* Appeal Judgement, para. 789; *Čelebići* Trial Judgement, para. 1084; *Tadić* Second Sentencing Trial Judgement, para. 19.

4616 *Blaškić* Appeal Judgement, para. 687. Further, an accused's decision to exercise the right to remain silent may also not be considered as an aggravating factor during sentencing. *Čelebići* Appeal Judgement, para. 783.

4617 Prosecution Final Brief, para. 962.

willingly participated in the crimes which he tried to cover up.[4619] The Prosecution also alleges that his role was essential to the destruction of the Bosnian Muslim population of Eastern BiH.[4620]

1224. With regard to the Accused's position, functions, and actions, the Majority particularly notes the Accused's high rank and central position within the VRS Main Staff as an Assistant Commander, and the Chief of the Sector for Intelligence and Security Affairs.[4621] The Accused was the highest officer in charge of intelligence and counter-intelligence—which included preventing leaks of information.[4622] The Accused, because of his position, was also in charge of POW exchanges and was very familiar with the rules regarding the treatment of POWs and POW exchanges.[4623] The Majority finds that he was in contact with his subordinates, receiving information about what was happening on the ground in Srebrenica, and in turn he directed and supervised their criminal activities.[4624] Furthermore, from the beginning of the plan to remove Bosnian Muslims from Eastern BiH, the Accused, according to the Majority, was actively involved in the VRS's implementation of the aims set out in Directive 7 to "create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa", resulting in the forcible removal of approximately 30,000–35,000 Bosnian Muslims from the Srebrenica and Žepa enclaves in a short period.[4625]

1225. The Majority in particular found that the Accused contributed to the JCE to Murder by using his position as the Chief of the Sector for Intelligence and Security Affairs to cover up the crimes of his fellow JCE members.[4626] The Majority in this regard specifically recalls the Accused's instruction to his subordinates to take measures to hide the Bosnian Muslim men and boys detained at the Nova Kasaba Football Field from sight. Thereafter, his contribution to the murder operation continued by way of concealing it.[4627] The Majority has also established that the Accused knowingly owed a duty to the captured men to protect them from harm, yet intentionally failed in his duty in order to contribute to the JCE to Murder.[4628] It was his failure to issue orders that he should have, to protect these men, as well as his attempts to cover up the murders, by which the Accused abused his authority. The Majority therefore finds that the Accused abused his position by covering up the crimes and failing to protect the Bosnian Muslim prisoners in accordance with the

4618 *See supra* para. 1218.
4619 Prosecution Final Brief, para. 963.
4620 Prosecution Final Brief, para. 963.
4621 *See supra* para. 913.
4622 *See supra* paras. 103–104, 914–921.
4623 *See supra* para. 1122.
4624 *See supra* para. 1079.
4625 *See supra* para. 1195.
4626 *See supra* para. 1128.
4627 *See supra* para. 1103.
4628 *See supra* para. 1024.

rules that were binding to Bosnian Serb Forces. Moreover, the Accused contributed to the forcible removal operation in both enclaves which also constituted an abuse of his position. Therefore, the Majority takes this into account as an aggravating factor.

1226. With regard to the Prosecution's submission that the Accused willingly participated in and covered up crimes, the Majority recalls that the informed, willing, or enthusiastic participation of an accused may be considered an aggravating factor. The Majority concurs with the *Popović et al.* Trial Chamber that willingness in the sense of voluntariness is a necessary component of the crimes,[4629] which therefore cannot be considered in aggravation.[4630] While the Majority finds that the Accused consciously and voluntarily participated in the crimes for which he has been found guilty, it does not find that he acted with any enthusiasm or zeal. Consequently, the Majority does not consider the willingness of the Accused to participate in the crimes to be an aggravating factor.

1227. Lastly, regarding the Prosecution's submission that the Accused's role was essential to the destruction of the Bosnian Muslim population, the Majority recalls that the Accused was actively and directly involved in the realisation of the criminal objectives to remove the Bosnian Muslim population from the enclaves and to murder the Bosnian Muslim males from Srebrenica. The Accused played the pivotal role in the two JCEs by also forming plans and issuing orders and instructions that were consciously designed to further their goals. The Accused's actions and omissions were deliberate. Therefore, the Majority takes this into account as an aggravating factor.

1228. Mitigating circumstances that have been identified in the jurisprudence of the Tribunal include cooperation with the Prosecution; the admission of guilt or a guilty plea; the expression of sincere remorse; sympathy, compassion or sorrow for the victims of the crimes; voluntary surrender; good behaviour while in detention; the personal and family circumstances of the convicted person; the post-conflict conduct of the convicted person; the duress under which he acted; indirect or limited participation in the commission of the crime; diminished mental responsibility; age; assistance to victims; fully complying with certain obligations, such as the terms and conditions of provisional release; and preventing others from committing crimes.[4631] Ill-health of the convicted person is to be considered as a mitigating factor only in exceptional cases.[4632]

4629 *Popović et al.* Trial Judgement, para. 2154.

4630 *See supra* para. 1221.

4631 Rule 101(B)(ii) of the Rules; *Jelisić* Appeal Judgement, para. 122; *Strugar* Appeal Judgement, paras. 365–366 (although the convicted person can express sincere regrets without admitting his participation in a crime, remorse requires acceptance of some moral blameworthiness for personal wrongdoing, falling short of the admission of criminal responsibility or guilt); *Blaškić* Appeal Judgement, para. 696; *Popović et al.* Trial Judgement, para. 2140; *Lukić and Lukić* Trial Judgement, para. 1053; *Milutinović et al.* Trial Judgement, Vol. III, para. 1152; *Jokić* Sentencing Judgement, paras. 82, 89–91, 103; *Banović* Sentencing Judgement, para. 70–72; *Erdemović* Sentencing Trial Judgement, para. 16; *Krajišnik* Appeal Judgement, paras. 816–817; *Kunarac et al.* Appeal

1229. Finally, whether certain factors related to the character of the accused are considered as aggravating or mitigating circumstances is to a large extent dependent upon the circumstances of each case.[4633] In certain cases, the good character of the convicted person, including the lack of a prior criminal record, may be considered in mitigation;[4634] it may, however, also serve to demonstrate the particularly heinous nature of the crimes committed.[4635] The same bipolar nature of such factors has also been considered to apply to intelligence and good education,[4636] good conduct, or inappropriate behaviour during trial proceedings.[4637]

1230. The Majority recalls that the Accused submitted that he is innocent and should be acquitted on all counts, and that the Accused did not put forward any mitigating factors.[4638] However, in the interest of justice, the Majority considers *proprio motu* some relevant circumstances that might be mitigating. In this regard, the Majority acknowledges that the good behaviour of the Accused during detention in the UNDU and during the trial proceedings, in comparison to his obstructive behaviour observed during the pre-trial proceedings, enhanced its ability to conduct the trial in a fair and expeditious manner. While the Majority appreciates such behaviour and considers it generally to be a mitigating factor, it notes that this sort of behaviour should be commonplace, is expected of all accused, and, viewed with his prior behaviour during the pre-trial proceedings, gives this factor little weight. The Majority further notes the advanced age of the Accused;[4639] however, considered in relation to the gravity of the crimes for which he has been found guilty, the Majority gives this factor very little weight. Lastly, the Accused's ill-health was one of the Chamber's main concerns during the pre-trial phase.[4640] Considering the past and current status of the Accused's health, however, the Majority does not regard it as an exceptional case that merits mitigation. Therefore the Majority gives it no weight.

Judgement, paras. 362, 408; *Blagojević and Jokić* Appeal Judgement, paras. 330, 342, 344; *Krstić* Appeal Judgement, para. 272–273; *Čelebići* Appeal Judgement, para. 590; *Kupreškić et al.* Appeal Judgement, para. 430.

4632 *Babić* Sentencing Appeal Judgement, para. 43; *Blaškić* Appeal Judgement, para. 696; *Simić* Sentencing Judgement, para. 98. *See also Strugar* Appeal Judgement, para. 392.

4633 *Hadžihasanović and Kubura* Appeal Judgement, para. 328; *Babić* Sentencing Appeal Judgement, para. 49.

4634 *Krajišnik* Appeal Judgement, para. 816; *Popović et al.* Trial Judgement, para. 2141; *Lukić and Lukić* Trial Judgement, para. 1056. *See also Hadžihasanović and Kubura* Appeal Judgement, paras. 325–326; *Furundžija* Trial Judgement, para. 284.

4635 *Popović et al.* Trial Judgement, para. 2141; *Lukić and Lukić* Trial Judgement, para. 1056; *Simić* Sentencing Judgement, paras. 103-105; *Tadić* First Sentencing Trial Judgement, para. 59. *See also Babić* Sentencing Appeal Judgement, para. 51.

4636 *Hadžihasanović and Kubura* Appeal Judgement, paras. 328–329; *Stakić* Appeal Judgement, para. 416; *Milutinović et al.* Trial Judgement, Vol. III, para. 1151; *Brđanin* Trial Judgement, para. 1114.

4637 *Čelebići* Appeal Judgement, para. 788; *Popović et al.* Trial Judgement, para. 2141.

4638 *See* Accused Final Brief, para. 1.

4639 *See supra* para. 913.

4640 *Infra* Annex B B. 1.

1231. While the Prosecution argued against finding remorse or cooperation with the Tribunal as mitigating factors,[4641] the Majority notes that the lack of a mitigating factor cannot be an aggravating factor. Recalling that the Accused did not argue for any mitigating factors, the Majority accordingly inquires no further, and gives these factors no weight.

3. General Practice regarding Prison Sentences in the Courts of the former Yugoslavia

1232. Although the general practice regarding prison sentences in the courts of the former Yugoslavia must be taken into account when determining the appropriate sentence, it is not binding upon the Majority.[4642] The Majority is not prevented from imposing a greater or lesser sentence than would have been imposed under the legal regime of the former Yugoslavia.[4643] Relevant sources include not only the case law of the SFRY but also pertinent statutory law in force at the time of the commission of the crimes in question.[4644]

1233. Following the break-up of the SFRY, the RS adopted the SFRY Criminal Code, including the provisions on crimes against humanity without any substantial amendments.[4645] At the time relevant to this Indictment, this law was applicable in the RS with regard to the commission of the crimes.[4646]

1234. Sentencing by the courts of the former Yugoslavia was based on the provisions of Chapter XVI of the SFRY Criminal Code, which relates to "Criminal Acts Against Humanity and International Law" and covered crimes committed during armed conflict. Article 141 of the SFRY Criminal Code covered the crime of genocide[4647], and Article 142(1) concerned war crimes against

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4641 Prosecution Final Brief, paras. 960–963 (arguing, *inter alia*, that the Accused hid as a fugitive after the Indictment against him was made public).

4642 *Krajišnik* Appeal Judgement, para. 749; *Gajić* Appeal Judgement, para. 398; *Krstić* Appeal Judgement, para. 260; *Kunarac et al.* Appeal Judgement, paras. 348–349; *Čelebići* Appeal Judgement, para. 813.

4643 *Krstić* Appeal Judgement, para. 262.

4644 *Popović et al.* Trial Judgement, para. 2142; *Milutinović et al.* Trial Judgement, Vol. III, para. 1154. *See also Dragan Nikolić* Sentencing Appeal Judgement, para. 85; *Krstić* Appeal Judgement, para. 261.

4645 *See supra* para. 80.

4646 *See supra* para. 80. *See also* Ex. P02482 (Regulations on the Application of International Laws of War in the Armed Forces of the SFRY).

4647 Ex. P02480, p. 1 (Article 141 of the SFRY Criminal Code states: "Whoever, with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, orders killings or serious bodily harm to or gravely impairs the physical and mental health of members of the group or forcibly deports the population, or inflicts on the group conditions of life calculated to bring about its extermination in whole or in part, or imposes measures intended to prevent births within the group, or forcibly transfers children of the group to another group, or whoever with the same intent commits any of the aforementioned offences, shall be punished by no less than five years in prison or by death penalty.").

civilians; both allowed a range of sentences for violations of international law in times of war or armed conflict from a minimum of five years up to the death penalty.[4648]

1235. Moreover, Article 38(2) of the SFRY Criminal Code set out the terms of imprisonment and provided for a sentence of twenty years in prison in lieu of the death penalty.[4649] In 1998 however, the Federation of BiH abolished the death penalty and replaced it with imprisonment of 20–40 years for the gravest criminal offences in the Federation of BiH and with life imprisonment in the RS as of October 2000.[4650]

4. Comparison with Other Cases

1236. The Majority recalls that the Appeals Chamber has held that, while a sentence must be tailored to the individual circumstances of the case at hand, a sentence should not be capricious or out of line with sentences in similar cases, for similar crimes, and with similar circumstances.[4651] The Majority notes the long history of cases dealing with the tragic events of Srebrenica and the sentences handed down to the accused, including those who pleaded guilty to the crimes charged, from *Prosecutor v. Dražen Erdemović* to the latest trial judgement in the case of *Prosecutor v. Popović et al.* While taking into account the sentences that were rendered in these cases, the crimes for which the accused were found guilty, and the aggravating and mitigating factors for each accused, the Majority accords due weight to the specific circumstances of the Accused in this case, in particular his unique positions and roles he played in the commission of the crimes, as discussed before.

5. Credit for the Time Served in Custody

1237. Pursuant to Rule 101(C), the Accused is entitled to credit for the time spent in detention pending and during his trial. The Chamber notes that the Accused has been in custody in relation to this Indictment since his arrest on 31 May 2007.[4652] The Accused will receive full credit for the time spent in custody since that date.

4648 Ex. P02480, pp. 1–2. Article 142 of the SFRY Criminal Code provides that "whoever commits any of the [war crimes against civilian population] shall be punished by no less than five years in prison or by death penalty." Ex. P02480, pp. 1–2.

4649 Article 38(2) of the SFRY Criminal Code.

4650 Article 38 of the BiH Federation Criminal Code and Article 32 of the RS Criminal Code.

4651 *Kvočka et al.* Appeal Judgement, para. 681; *Čelebići* Appeal Judgement, paras. 719, 721; *Jelisić* Appeal Judgement, para. 96; *Furundžija* Appeal Judgement, para. 250; *Krstić* Appeal Judgement, para. 248.

4652 *See supra* para. 19.

XI. DISPOSITION

1238. Having considered all of the evidence and the arguments of the Parties, and based upon the factual and legal findings as determined in this judgement, the Chamber decides as follows, in accordance with the Statute and the Rules.

1239. The Chamber finds by Majority, Judge Nyambe dissenting, the Accused **Zdravko Tolimir GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

Count 1: Genocide under Article 4(3)(a) of the Statute;

Count 2: Conspiracy to Commit Genocide under Article 4(3)(b) of the Statute;

Count 3: Extermination, a crime against humanity under Article 5(b) of the Statute;

Count 5: Murder, a violation of the laws or customs of war under Article 3 of the Statute;

Count 6: Persecutions, a crime against humanity under Article 5(h) of the Statute;

Count 7: Inhumane Acts through Forcible Transfer, a crime against humanity under Article 5(i) of the Statute.

1240. In relation to the following count, on the basis of the principles relating to cumulative convictions, the Majority does not enter a conviction:

Count 4: Murder, a crime against humanity under Article 5(a) of the Statute.

1241. The Chamber finds **Zdravko Tolimir NOT GUILTY** and thus acquits him of the following count:

Count 8: Deportation, a crime against humanity under Article 5(d) of the Statute.

1242. Having taken into account the factors regarding sentencing as determined in this Judgement, the Majority sentences **Zdravko Tolimir** to a sentence of life imprisonment.

1243. **Zdravko Tolimir** has been in custody since his arrest on 31 May 2007. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for the time served in detention until the day of this Judgement. He is also entitled to credit for the period he may serve pending the finalisation of arrangements for his transfer to the State where, in accordance with Rule 103(A) of the Rules, he shall serve his sentence. Pursuant to Rule 103(C) of the Rules, he shall remain in the custody of the Tribunal until the day of his transfer.

Done in English and French, the English text being authoritative.

Judge Christoph Flügge
Presiding

Judge Antoine Kesia-Mbe Mindua

Judge Prisca Matimba Nyambe

Judge Antoine Kesia-Mbe Mindua appends a Separate and Concurring Opinion
Judge Nyambe appends a Dissenting Opinion and a Separate and Concurring Opinion.

Dated this twelfth day of December 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

XII. SEPARATE AND CONCURRING OPINION OF JUDGE ANTOINE KESIA-MBE MINDUA

A. Bodies of Nine Bosnian Muslim Men Found Near the UN Compound

1. While I believe that the DutchBat soldiers are reliable in their evidence concerning the bodies of the nine Bosnian Muslim men found near the UN compound in Potočari, I am nevertheless perplexed and helpless before the attitudes of Rutten and Van Schaik which resulted in the lack of identification documents, and before the impossibility of developing photographs taken by Rutten of the nine bodies.

2. Moreover, the evidence does not show who witnessed the killings or who saw the bodies first. Therefore, it is not possible to know who the source of the rumour was which led to the discovery of the bodies. Furthermore, the evidence says that no further investigation was conducted and we know that no forensic examination or analysis was performed on those nine bodies.

3. The standard of beyond reasonable doubt means that a judge cannot be satisfied only by his intimate conviction, which should rest of course on solid grounds, but he must have more evidence yet. In the case of these nine bodies, I am convinced by the evidence that their deaths were violent as a result of a killing. However, in that moment of armed conflict in such a violent atmosphere outside the UN compound, I do not know the exact circumstance in which these nine persons were killed. It is therefore very hard for me to attribute their deaths beyond reasonable doubt to anyone at this stage.

B. JCE Liability

4. The JCE mode of liability, with its three forms, is not developed *expressis verbis* in the Statute of the ICTY. It is also absent from the Rome Statute of the ICC and is not applied before that Court. However, JCE liability has been recognised and well developed by the ICTY Appeals Chamber.

5. On the basis of Article 7(1) of the Statute, the Prosecutor alleges criminal responsibility of the Accused through two JCEs. I fully comply with the jurisprudence of the Appeals Chamber and as part of the Majority, I share the view that the Accused participated in the above mentioned JCE to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa, as well as the JCE to murder the able-bodied Bosnian Muslim men from Srebrenica.

6. Nevertheless, I believe that when an accused can be found liable under the classical modes of liability for individual criminal responsibility under Articles 7(1), (2), (3), and (4) of the Statute, these modes of liability are preferable to that of JCE liability because, in the event that such a JCE is not established, the accused remains accountable for his individual criminal behaviour and, in so doing, the victims are not left without remedy.

Done in English and French, the English text being authoritative.

Antoine Kesia-Mbe Mindua
Judge

Dated this twelfth day of December 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

XIII. DISSENTING AND SEPARATE CONCURRING OPINIONS OF JUDGE PRISCA MATIMBA NYAMBE

A. Dissenting Opinion of Judge Nyambe

1. Throughout the course of this trial, in being tasked with a judicial role, I have been guided by the Statute of this Tribunal that ensures that the Accused is presumed innocent and that all facts that are material to the elements of the crime are shown to be proven beyond reasonable doubt in order to make a conviction.[1] In employing this standard in my analysis, I have found that the Majority in this case has made several findings to which I cannot agree.

2. The Appeals Chamber of this Tribunal has held that:

> The standard of proof at trial requires that a Trial Chamber may only find an accused guilty of a crime if the Prosecution has proved each element of that crime and the mode of liability, and any fact which is indispensable for the conviction, beyond reasonable doubt.[2]

Thus, at the close of the case, an Accused is entitled to the benefit of doubt as to whether the offence has been proven.[3] The jurisprudence of the Tribunal on this matter is clear —any doubt will be resolved in favour of an accused under the principle of *in dubio pro reo*.[4] The standard of proof of beyond reasonable doubt "presents a high hurdle for the Prosecution to overcome".[5] As outlined by the *Martić* Appeal Chamber, it must consist of more than a "high degree of probability".[6] Prior to *Martić*, the *Čelebići* Appeal Chamber highlighted the onus of this standard, stating:

> It is not sufficient that it is a reasonable conclusion available from [the] evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.[7]

3. In its determinations, the Majority has relied upon evidence that in my assessment, as outlined below, does not support its conclusions to the required standard of "beyond reasonable doubt". Therefore, I respectfully dissent from the Majority's findings as follows. In the event that the factual findings of the Judgement do not comport with my views, as expressed here, the reader should consider this Dissent as authoritative of my position.

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1 *See supra* Judgement, para. 30.
2 *Blagojević and Jokić* Appeal Judgement, para. 226.
3 *Čelebići* Trial Judgement, para. 601.
4 *Halilović* Appeal Judgement, para. 109.
5 *Milutinović et al.* Trial Judgement, Vol. I, para. 62 (quote from para. 4).
6 *Martić* Appeal Judgement, para. 57.
7 *Čelebići* Appeal Judgement, para. 458 (emphasis in original). *See also Woolmington v DPP* [1935] UKHL 1 ("[W]hile the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence.")

1. Preliminary Remarks on the Evaluation of Evidence

4. From the outset, I wish to state that the evidence against the Accused on all counts charged is entirely circumstantial, based on presumptions, suppositions, and his professional association with those who committed the crimes that are the subject of this Indictment. There is no evidence linking him to the crimes perpetrated by his subordinates, nor does the evidence demonstrate that he knew that those crimes were being perpetrated. The Accused's connection to the crimes is entirely derived from the professional chain of command with those who did commit these crimes. That said, before giving my dissenting opinions, I will briefly set out my evaluation of certain parts of the evidence that are of relevance to these opinions.

5. It is established in the jurisprudence of the Tribunal that when weighing the probative value of the evidence of accomplice witnesses who may have motives or incentives to implicate an accused person before the Tribunal, a Chamber is bound to carefully consider the totality of the circumstances in which it was tendered.[8] Indeed, Hale, C.J., in referring to centuries of practice, used strong language of condemnation of pleas of approvement—the precursor of the modern practice of providing immunity from prosecution to accomplices willing to give evidence for the Crown. For centuries, use of such "accomplice evidence", or "approvers", was cited as untrustworthy in common law systems; notably, as recorded by Hale:

> [T]his course of admitting of approvers hath been long disused, and the truth is, that more mischief hath come to good men by these kind of approvements by false accusations of desperate villains, than benefit to the public by the discovery and convicting of real offenders.[9]

6. It is not unknown for persons in such a position to wish to ingratiate themselves with the police, or the Prosecutor; here, this is achieved by a promise to co-operate with the OTP. In *Benedetto and Labrador v. The Queen*, the Privy Council noted that, evidence from an untried prisoner offering hearsay from another untried prisoner raises "an acute problem which will always call for special attention in view of the danger that it may lead to a miscarriage of justice".[10] *Benedetto* held that such evidence is "inherently unreliable, in view of the personal advantage which such witnesses think they may obtain by providing information to the authorities".[11] Such witnesses, it was held, "tend to have no interest whatsoever in the proper course of justice" as "they will almost always have strong reasons of self-interest for seeking to ingratiate themselves with those who may be in a position to reward them for volunteering confession evidence".[12]

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8 *See supra* Judgement, para. 42.
9 Hale, Matthew, *Hale's History of the Pleas of the Crown* (1800), Vol. II, p. 226.
10 *Benedetto and Labrador v. R.* [2003] 1 WLR 1545, para. 31.
11 *Benedetto and Labrador v. R.* [2003] 1 WLR 1545, para. 32.
12 *Ibid.*

7. As propagated in *Shamwana et al. v. The People*:

> [I]t is one thing to call for the prosecution an accomplice, a witness whose evidence is suspect [...] It is quite another to call a man who is not only an accomplice, but is an accomplice against whom proceedings have been brought which have not been concluded.[13]

The Zambian Supreme Court in *Shamwana* went on to hold that "[i]f, and only if, the inducement is very powerful, the Judge may decide to exercise his discretion in favour of exclusion"; an exercise of such consideration properly included whether the witness "was under the influence of continuing inducements".[14]

8. In the International Tribunals, "accomplice evidence" is treated with similar caution. The *Setako* Appeals Chamber recently highlighted such concerns in noting "that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal or to lie".[15] While a Trial Chamber has discretion to rely on such testimony, it "is bound to carefully consider the totality of the circumstances in which it was tendered".[16]

9. Therefore, in my assessment of accomplice evidence, I draw comfort from this long history of strong caution which makes me unable to take the statements of such "accomplices" as given in a fully truthful manner. In applying these principles, I have taken full account of my observations of the demeanour of the witnesses who have been convicted for crimes arising from events alleged in the Indictment—including, *inter alia*, Momir Nikolić and Dražen Erdemović, and I have concluded that the testimony of certain of them has been affected by their self-interest.[17]

10. Specifically, certain aspects of Momir Nikolić's Plea Agreement, taken as an exhibit, concern me, in particular:

> In exchange for Momir Nikolić's plea of guilty to Count 5, Persecutions [...] the Office of the Prosecutor agrees to the following: (a) That the Prosecutor will recommend to the Trial Chamber that they impose a sentence within the range of 15 to 20 years.[18]

> [Momir] Nikolić agrees to testify truthfully in the trial of the co-Accused in this case before the Tribunal and in any other trials, hearings or other proceedings before the Tribunal as requested by the Prosecution.[19]

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13 *Shamwana and 7 Others v. The People* (1985) Z.R. 41 (S.C.), p. 89 *citing R. v. Pipe (1967)* 51 Cr. App. R. 17.

14 *Shamwana and 7 Others v. The People* (1985) Z.R. 41 (S.C.), p. 89.

15 *Setako* Appeal Judgement, para. 143.

16 *Ibid.*

17 Momir Nikolić testified on 4–7 and 11–12 April 2011. He was sentenced by the Tribunal to 20 years of imprisonment for crimes referred to in the Indictment. Momir Nikolić, T. 12218 (4 April 2011). *See also Nikolić* Sentencing Appeal Judgement. I am of the opinion that the statements that he made at the time of his plea agreement were coloured by his interest in receiving a less severe punishment than he otherwise might and that this has also affected his testimony in the instant case. *See* Ex. P02157 (various documents relating to Momir Nikolić's Plea Agreement). I therefore do not rely on his testimony. *See* Annex C: Confidential Annex.

18 Ex. P02157, p. 5.

> The Prosecution and [Momir] Nikolić also agree that they will jointly recommend to the Trial Chamber that sentencing of [Momir] Nikolić in this matter not be set until after [Momir] Nikolić has testified in the upcoming trial.[20]

11. Moreover, in cases that Momir Nikolić would have tried to recant or withdraw certain aspects of his testimony concerning others, he simply could not have done so as he was locked in because his agreement was conditioned on the fact that he would not appeal any charge. Further, his evidence was under the influence of continuing inducements. He was not free to give his testimony as failure to give evidence in this or other proceedings would have relegated him to the possibility of having the dismissed charges reinstated, and he could face further prosecution. As seen in the third-listed agreement point above, his own sentencing was contingent upon his testimony "in the upcoming trial".[21] Analysing the plea agreements, especially that of Momir Nikolić, I note that the Indictment against the Accused was developed in light of the contents of these guilty pleas.

12. With such conditions in place, accused persons that testify after they have entered into plea agreements with the Prosecution always have a great incentive to testify in line with their plea agreements—the details of which were drafted by the Office of the Prosecutor to reflect the very crimes it charged in their respective indictments. I note that in these plea agreements, there are legal findings of crimes that are not a part of the plea—for example, "forcible transfer"—and these terms are used in place of a description of the actual events. Thereafter, when the subject of this plea bargain testifies, these terms are used in his testimony. Naturally, such testimony would fall directly in line with the charges of the indictments of the co-Accused, thereby creating a shortcut to convict his co-Accused as that Chamber may not even get the necessary details; rather, they are given the conclusions.

13. It is patently clear from the above that this is not a plea of guilt motivated by contrition or remorse. The above shows that Momir Nikolić's plea of guilty was motivated by the above-stated goals of reduced penalties with the evidence from his plea agreement necessarily shifting blame to the co-accused or potential co-accused in other trials. Therefore, I consider this plea to be influenced by improper motives, made with the assurance that at the very least he stood a chance of having a reduced sentence and the withdrawal of the most serious crimes against him. In fact, Momir Nikolić received a reduced sentence in a case where there was a possibility of life imprisonment. I will, therefore, not be relying upon his evidence, or any evidence given by a witness under similar inducement, absent corroboration of their evidence from an independent

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19 Ex. P02157, p. 7.
20 *Ibid.*
21 *Ibid.*

source.[22] In this respect, I note *R. v. Baskerville* which held that "evidence in corroboration must be independent testimony".[23] The *Baskerville* Court recalled, especially, that "the corroboration must be by some evidence other than that of an accomplice, and therefore one accomplice's evidence is not corroboration of the testimony of another accomplice".[24]

14. I also note that non-neutral attitudes were detectable in the testimony given by witnesses associated with parties to the armed conflict in BiH. Again, in drawing inferences, I was guided by my assessment of their demeanour when they appeared in court in light of the totality of the evidence. I noted, in particular, that given the passage of time and strong views arising in a civil war some Bosnian Muslim witnesses were inclined to overstate the hardships inflicted on them in Potočari, while the opposite inclination was evident in the testimony of some of the Bosnian Serb witnesses.[25] These tendencies were by no means universal, but they do give rise to a need for caution in evaluating the evidence of these witnesses.

15. Caution should also be extended to the evidence of some witnesses from outside BiH who, as a result of traumatic experiences or for other reasons, were not wholly objective in their testimony. Johannes Rutten, a commander of an anti-tank platoon in DutchBat,[26] provides an example of this. There is independent evidence that he reacted in an emotional way towards the Bosnian Serbs during the departure of the Bosnian Muslims from Srebrenica.[27] In this regard, I take particular concern with the instance on 13 July 1995 in which Rutten compared the situation in Potočari with the Second World War and told the Bosnian Serb soldiers, according to Van Duijn: "This is like what happened 50 years ago, with the Nazis".[28] Taking into account the history of the region, such terminology greatly upset the VRS soldiers on the ground who felt they were being branded as "Nazis".[29] Van Duijn stated that the result of all of this was that the transportation of the Bosnian Muslim civilians had to be stopped for at least one hour, while he needed to calm down the upset VRS soldiers and try to explain Rutten's unprofessional and inappropriate behaviour.[30] Such

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22 *See R. v. Baskerville* [1916] 2 K.B. 658, p. 87 ("There is no doubt that the uncorroborated evidence of an accomplice is admissible in law [...] But it has long been a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices, and, in the discretion of the judge, to advise them not to convict upon such evidence, but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence"). *See also R. v. Mutale Mukonge and Chande*, Law Reports of Northern Rhodesia, Vol. II, p. 82.

23 *R. v. Baskerville* [1916] 2 K.B. 658, p. 91.

24 *R. v. Baskerville* [1916] 2 K.B. 658, p. 89 *citing R. v. Noakes* [1832], 5 C. & P. 326.

25 The *Đorđević* Trial Chamber observed a prevailing tendency among some witnesses who were residents of or present in towns and villages where the events in the Indictment were alleged to have taken place to deny any knowedge about any activities of the Kosovo Liberation Army or its presence in certain areas. *Đorđević* Trial Judgement, para. 15.

26 Johannes Rutten, Ex. P02638, KT. 2109 (5 April 2000).

27 Ex. D00322, p. 15; Ex. D00324, pp. 22–25.

28 Ex. D00423, p. 24.

29 Ex. D00322, p. 15; Ex. D00324, p. 24.

30 *Ibid.*

unprofessional utterances towards Bosnian Serb soldiers show him as a biased witness. Having observed his testimony,[31] I am of the opinion that this bias was still apparent. This bias was especially evident when he gave conclusions rather than straight answers. In this regard, I note his answer to a question by the Accused in cross-examination whether there was any evidence pointing to the fact that the VRS had killed the nine men found in Potočari. He replied:

> So I never said that I'm sure that VRS personnel could have done that, but all the things that I said earlier lead—leads to the conclusion.[32]

16. Similarly, having had the benefit of seeing and hearing the testimony of DutchBat member Vincentius Egbers,[33] I also believe that it should be treated with caution for similar reasons. Some of his answers were, in fact, conclusions that I find rather problematic as they were preconditioned opinions that are not supported by the evidence admitted in this case, something that I will further discuss in a later section on the alleged forcible transfers from Potočari and Žepa. With regard to the transportation process of the civilian population in Potočari, Egbers, for example, concluded that "[n]aturally, people in this case were being transported against their will" and that "people had no choice".[34] In his view what had happened in Potočari was in fact deportation—something that reminded him of "the deportation of the Jews in the Second World War".[35] In other instances I was surprised that he expressed ignorance about matters that I would expect him to know as a person with military working experience under a UN mandate, for example his answers related to the Geneva Conventions regarding demilitarisation.[36]

17. Finally, the evidence of other witnesses involved in the events on the ground in 1995 also occasionally shows signs of prejudiced perceptions. For example, when UNMO member Joseph Kingori[37], whose evidence was mostly informative, is depicted on video footage in Potočari, he describes the situation in Potočari as follows:

> This is not good. I'm talking about overcrowding in that place where all the men are being taken, it's too crowded. They are sitting on each other, this is no good.[38]

However, the evidence provided by Kingori during his examination in court draws a much harsher picture of the events in that people were forced to leave without any genuine choice and that the process of their transportation "was not honourable in that they were not being requested to get in.

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31 Rutten testified on 12 September 2011.
32 Johannes Rutten, T. 17845 (12 September 2011).
33 Vincentius Egbers testified on 1–2 and 9 November 2010.
34 Vincentius Egbers, T. 7480 (9 November 2010).
35 *Ibid.*
36 Vincentius Egbers, T. 7482–7484, 7455–7458 (9 November 2010).
37 Joseph Kingori, Ex. P00950, PT. 19155–19156 (12 December 2007). Kingori testified in the present case on 14–16 and 20 September 2010.
38 Ex. P02798, Disc 2, 00:08:30–00:08:49, p. 75.

In fact, they were being pushed in [and] you could be pushed even to the ground by force".[39] As will be outlined in detail later, while there was a lot of chaos in Potočari due to the overwhelming number of civilians, such partial descriptions, as the one given by Kingori, do not provide for a full and truthful picture of the transportation process as it was evolving on the ground.

2. Nature of the Conflict

(a) Directive 7 and 7/1

18. The Majority in this case places substantial reliance on Directive 7 as guiding the operations of the VRS during the time relevant to the Indictment and finds that "the restrictions of convoys and military actions against the enclaves [...] were carried out pursuant to the strategic goals set out in Directive 7".[40] For the following reasons, I cannot agree.

19. While the Majority places reliance upon Directive 7 as guiding an intent to attack a civilian population, Directive 7 cannot be taken in a vacuum and must be read with a consideration of the historical context of the region, in particular, that the conflict that had been ongoing in BiH from at least 1992. Thus, Directive 7's call for the "elimination of the enclaves" must be taken with consideration of the three-year struggle that had been ongoing amongst the three ethnicities of BiH. The Majority holds that provision for "elimination of the enclaves" is drawn from the overarching Strategic Objectives of the RS which, it found, set forth "a policy (...) aimed at ridding the eastern enclaves of its Bosnian Muslim populations".[41] However, the Majority does not recall the Strategic Objectives were formed at the same time as the VRS was formed; at a time "when it was obvious that the other two ethnic communities in [BiH] (the Muslims and the Croats) were forming their own armies".[42] In this light, a plain reading of Directive 7 does not reveal illegal objectives pertaining to the civilian population of the Srebrenica and Žepa enclaves. Rather, it demonstrates a global plan relating to the entirety of the conflict that was occurring over the whole of the BiH in 1995 in the quest for territorial control. Further, there is no evidence that the Strategic Objectives were ever used to guide VRS objectives. Notably, VRS Chief of Staff Milovanović did not even know about the Strategic Objectives until 2004–2005 when he heard about them in testimony in the case of *Prosecutor v. Slobodan Milošević*.[43]

20. Regardless, the contents of Directive 7 are of marginal relevance to the events that unfolded in the summer of 1995 as it is plain from the evidence in this case that Directive 7/1 replaced

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39 Joseph Kingori, Ex. P00950, PT. 19255 (13 December 2007), PT. 19441–19442 (11 January 2008).
40 *See supra* Judgement, para. 1038.
41 *See supra* Judgement, para. 1010.
42 Ex. D00261, p. 1.

Directive 7. The Majority's findings indicate that as "[b]ased on an annual combat readiness analysis, as a rule, the directives contained tasks for a year".[44] Further, the evidence shows that "due to the changing situation on the ground and various new factors that would come up, [Directives] could be issued more frequently".[45] Importantly, at the issuance of a new directive, prior directives became invalid unless the language of the former was reformulated and included in the superseding directive.[46] The testimony provided on this matter was clear and was relayed not only by VRS members, but also by the Prosecution's own expert witness, Richard Butler.[47] Therefore, Directive 7/1—issued on 31 March 1995, just weeks after Directive 7—was the guiding "strategic goal" from that date onward and was not "intended to amplify and supplement Directive 7" as found by the Majority.[48]

21. Notably, Directive 7/1 did not contain the pertinent passage on which the Majority relies for finding a common purpose, namely to "create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of both enclaves".[49] Directive 7/1, which addressed at length actions to be taken in the eastern enclaves, could have re-issued the language of Directive 7 but it specifically did not.[50] Thus, it can be seen that such a goal—of creating an unbearable situation for the inhabitants of the Srebrenica and Žepa enclaves—was abandoned just weeks after it was issued.

22. In fact, while the second order for Krivaja 95, which the Majority relies upon to show a continuation of Directive 7, refers to "creat[ing] conditions for the elimination of the enclaves [...] pursuant to Operations Directive 7 and 7/1" of the VRS Main Staff,[51] a full reading of the order reveals that the civilian population was not a target of these orders. Rather, this order clearly instructed the VRS to "behave in every way in accordance with the Geneva Conventions" in dealing with POWs and the civilian population.[52] This document, and others in evidence in this case, shows that members of the VRS—including the Accused on several occasions—routinely

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43 Manojlo Milovanović, T. 14275–14276, 14278 (18 May 2011).

44 *See supra* Judgement, para. 99, n. 289. In this regard, Operational Directive 4 was long outdated by Operational Directive 6; the latter document does not contain language directed at a civilian population, rather it "re-visits portions of Directive 4, including 'to create objective conditions for achievement of the [VRS] strategic war goals'". *See also supra* Judgement, n. 648.

45 *See supra* Judgement, para. 99.

46 *See supra* Judgement, n. 289.

47 *See supra* Judgement, n. 289.

48 *See supra* Judgement, para. 191.

49 *See supra* Judgement, para. 191.

50 Ex. P01199.

51 Ex. P01202, p. 3.

52 Ex. P01202, p. 7. *See supra* Judgement, para. 217. The Judgement also recalls Mirko Trivić's testimony that Krivaja 95 participants were instructed to avoid any conflicts with UN personnel and civilians. *Ibid.*

advised their troops of the need to adhere to the laws of war and emphasised that civilians or UNPROFOR were not the target of their combat actions.[53]

23. Therefore, based on the evidence in this case I cannot agree with the Majority's reliance on Directive 7 as proof of an overarching plan to target the civilian population and, thus, I dissent accordingly from the conclusions it derives from such reliance.

(b) "Safe Areas" were not Demilitarised

24. The Majority makes a distinction between UN Security Council declared "safe areas" and the concept of a "demilitarised zone" under the provisions of international law and, by this, arrives at a conclusion that these areas were to be completely free from attack as they were "predominately civilian" despite finding that there may have been military targets within the enclaves.[54] However, as outlined in detail in the Judgement, early attempts at cease-fires and demilitarisation agreements in 1993 between the two warring parties were unsuccessful and the pattern of military activities continued, involving ABiH raids out of the enclaves which incurred retaliatory shelling by the VRS.[55] Given the use of these "safe areas" by the ABiH, in particular to house its 28th Division and provide a platform for launching attacks on the VRS, I cannot agree that these areas retained a predominately civilian character or that VRS actions upon the enclaves were necessarily targeting civilians.

25. In making findings of an attack through an old mine tunnel that preceded the fall of Srebrenica, the Majority found that: "Srebrenica was a safe haven, and the fact that there were members of the ABiH present in the enclave and carrying out ambushes outside of it, did not, in the view of the Majority, make the entirety of the enclave a military target".[56] However, the Majority, while citing the evidence of Petar Salapura that the actual target was the police station,[57] fails to acknowledge that this was in the city centre of Srebrenica where the command of an ABiH brigade was located[58]—which could reasonably be said to be a specific and legitimate military target. Further, the attack was abandoned after only minutes—upon realising that conditions would not

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53 *See, e.g.*, Ex. D00041; Ex. P01202, p. 7; Ex. P01600, p. 2; Milomir Savčić, Ex. P02418, PT. 15249–15252, 15273–15275, 15293–15297 (12 September 2007); Miroslav Deronjic, Ex. P00029, MT. 29770 (27 November 2003).

54 *See supra* Judgement, para. 704.

55 *See supra* Judgement, paras. 178–180, 183–184, 205; Ex. D00021; Adjudicated Fact 44. *See also* Ex. D00055, paras. 9–10.

56 *See supra* Judgement, para. 1021.

57 *See supra* Judgement, para. 1020.

58 Petar Salapura, T. 13532 (2 May 2011).

permit the specific targeting that was ordered.[59] Therefore, I cannot find beyond reasonable doubt that this incident demonstrates a "targeting" of the civilian population.

26. Further, it is clear that the objective of the attack on Žepa (Stupčanica 95) was never the civilian population itself. The order issued by Krstić on 13 July is very clear in that it states: "The civilian Muslim population and UNPROFOR are not targets of our operations. Collect them together and keep them under guard, but crush and destroy armed Muslim groups".[60]

27. While I agree with the Majority that, pursuant to Article 60(7) of Additional Protocol I, all other laws of war apply even if a zone fails to become a demilitarised zone,[61] I cannot support the view that the enclaves were to retain an untouchable character while, at the same time, sheltering operations of the ABiH. Therefore, I must dissent from the Majority's findings that any attack on the enclave necessarily included an attack on the civilian population.

3. Forcible Transfer

28. The Majority finds that "at the latest by early March 1995 a common plan existed in the Bosnian Serb leadership to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves".[62] The Majority further found that this plan was successfully implemented with regard to both enclaves. It found that "the busing of approximately 25,000–30,000 Bosnian Muslims out of Potočari on 12 and 13 July 1995 and nearly 4,400 Bosnian Muslims out of Žepa on 25–27 July 1995" constitutes the crimes of forcible transfer.[63] I respectfully dissent from the Majority's finding because I am not satisfied that the Prosecution has established beyond reasonable doubt that the elements for forcible transfer have been met, namely the forcible character of the displacement.

29. Setting out the law of the Tribunal in this regard, I note at the outset that for the crime of forcible transfer there must be a forced displacement of persons carried out by expulsion or other forms of coercion. The forced character of the displacement is determined by the absence of a genuine choice by the victim in his or her displacement.[64]

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59 *Ibid.*

60 Ex. P01225, p. 4. *See also* Ex. P01202, p. 7 (2 July 1995 order by Zivanović to Drina Corps instructing, *inter alia*, that when dealing with civilians and POWs they are to abide by the Geneva Conventions); Ex. D00085 (9 July 1995 letter from the Accused to Krstić, urging him to "[p]ay particular attention to protecting members of UNPROFOR and the civilian population" when attacking the Srebrenica enclave).

61 *See supra* Judgement, para. 704.

62 *See supra* Judgement, para. 1040.

63 *See supra* Judgement, para. 1008.

64 *Stakić* Appeal Judgement, para. 279; *Krnojelac* Appeal Judgement, paras. 229, 233; *Krajišnik* Trial Judgement, para. 724; *Blagojević and Jokić* Trial Judgement, para. 596; *Brđanin* Trial Judgement, para. 543. *See also Simić et al.* Trial Judgement, para. 126; *Krstić* Trial Judgement, para. 147.

30. I further note the legal provisions allowing for evacuations. Article 49 of the Fourth Geneva Convention and Article 17 of Additional Protocol II allow for an evacuation of the occupying power if the security of the population is at stake or imperative military reasons demand such evacuation.[65] For the reasons below, it is clear that such evacuations were necessary. In these cases, the protection power, in the case at hand, UNPROFOR, was duly informed of the evacuation, as called for by Article 49 of the Fourth Geneva Convention.

(a) Forcible Transfer from Potočari

31. On the evidence adduced in this case, in my view, the chaos and humanitarian crisis in Potočari was triggered when word went round that Srebrenica had fallen to the VRS, causing approximately 25,000–30,000 civilians in and around Srebrenica to move to the UN compound to seek shelter and protection from the UN and to get on the buses and trucks to ABiH-held territory in Tuzla to join their men who had left in a break-through in the same direction. It is only logical, in my view, that under these circumstances they would want to go to Tuzla as well. In fact, Exhibit D00538 chronicles the fall of Srebrenica as told by the ABiH 2nd Corps Command Military Security Service, notably recording that the notion of evacuation of civilians was one suggested in the context of military operations and a suggestion made to, not by, the VRS. Consider, especially, the following passage:

> Since the Chetniks had reached Zaboljina, a suburb of Srebrenica, the previous night, people had broken into all the warehouses in the town and gathered all the stocks of food. Panicked, they were moving towards Potočari, where they were being sent by UNPROFOR soldiers, who said that they too intended to move to Potočari. At about 1500 hours on 11 July 1995, almost the entire civilian population of the town and surrounding villages set off in the direction of the main UNPROFOR military base in Potočari. By 2000 hours that day, about 20;000 refugees had gathered in the UNPROFOR camp in Potočari and outside it [...] As the crow flies the Chetniks were only 200-300 metres away from the refugees. [...] Despite the fact that he was not the official representative of the civilians, at about 2215 hours, Nesib MANDŽIĆ, escorted by the commander of the Dutch Battalion and the liaison officer, arrived in Bratunac for negotiations [...] It was suggested to the Chetniks that they authorise the safe evacuation of the civilians, escorted by UNPROFOR, to free territory.[66]

This report does not describe a forcible movement of the population as targets of the Bosnian Serb Forces; rather, it indicates very specifically, as told by the ABiH themselves, that the population was ordered to go, starting from even before they arrived in Potočari:

> On the night of 11/12 July 1995, the decision was taken to break through towards Tuzla. [...] It was ordered that the entire civilian population located there should go, although they were trying to decide whether they should go with the army or head towards UNPROFOR.[67]

(i) Convoy Restrictions

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65 *See supra* Judgement, paras. 798–800.
66 Ex. D00538, p. 4.
67 Ex. D00538, p. 6.

32. On the evidence proffered in this case, I am unable to come to the conclusion that convoy restrictions caused the humanitarian crisis in the enclaves and contributed to the forcible removal of the civilian population by "squeezing" them to the point where living conditions became unbearable, as found by the Majority.[68] In fact, while I concur with the Majority in that some of the "convoy requests bear the Accused's initials with the word 'ne', signifying a disapproval of a particular convoy supply and/or destination",[69] I disagree that this can be seen as restricting all the humanitarian aid needed for the enclaves. Moreover, as indicated above, "the previous night, people had broken into *all* the warehouses in the town and gathered all the stocks of food" (emphasis added); to me this clearly indicates that there were several food stocks in Srebrenica in July 1995.[70] It is important in this regard to note the Accused's argument that a distinction was made between UNHCR convoys which provided food for the civilian population of Srebrenica, and UNPROFOR convoys, which provided material for the needs of UNPROFOR only.[71] Notably, there is no evidence to quantify how many convoys were rejected against the number of how many were approved to be able to conclude that these restrictions resulted in no, or insufficient, food for the civilians.[72]

33. Moreover, the Chamber heard evidence that by early July 1995, the ABiH itself had set up increasing numbers of checkpoints to block and inspect convoys.[73] In fact, there is evidence that the ABiH separated food and other supplies from incoming humanitarian aid convoys,[74] showing that while food was put through to the enclaves, it may not always have reached the intended beneficiaries, which in turn cannot be attributed to the VRS.

(ii) Humanitarian Conditions at the UN Compound in Potočari

34. The Majority noted the catastrophic conditions faced by those seeking shelter from 11–13 July 1995 at the UN compound in Potočari and concluded that "any necessity to move the population was the direct result of conditions created by the Bosnian Serb Forces".[75] However, to support its finding, the Majority also pointed to the evidence of Witness Mirsada Malagić who testified that "they just wanted to get out of this place where they knew that nothing good was going

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68 *See supra* Judgement, para. 1015.
69 *See* Judgement, para. 194, n. 706; Ex. P02233.
70 *See*, para. 31.
71 Accused Closing Argument, T. 19469–19470 (22 August 2012).
72 In fact, food reserves in Žepa were sustained late into 1995. Meho Džebo, T. 14793–14794 (30 May 2011). *See also* PW-022, Ex. P00097, PT. 3938, 4041 (15 November 2006); PW-022, T. 1128–1129 (14 April 2010); PW-013, T. 9865 (14 February 2011); Zoran Čarkić, T. 12810, 12858–12859 (14 April 2011); Ex. D00212.
73 Cornelis Nicolai, T. 4095–4097 (18 August 2010).
74 Ex. D00080; Richard Butler, T. 17214 (24 August 2011); Slavko Kralj, T. 18292–18295, 18299 (23 January 2012).
75 *See supra* Judgement, para. 811.

to happen to them".[76] In this regard, I want to add that not only did people want to leave in 1995, the Chamber also heard evidence that as early as 1993 civilians were eager to leave the enclave, using incoming UN supply convoys to be transported out of the area.[77] This wish to leave was further enhanced throughout the following months through constant fighting between the warring parties, that included the fear of NATO air strikes[78]—in other words—the natural and self-evident desire of every civilian man, woman, and child to leave a besieged area to seek safety.

35. The Majority refers to the "sleepless crowd [in Potočari which] heard the masses crying, moaning, and screaming" and later renders its finding that the VRS terrorised the civilians present at the UN compound with the requisite intent to discriminate on political, racial, or religious grounds.[79] I cannot agree to this conclusion as with regard to those moans and screams heard from the crowd one cannot rule out scuffles occurring in such a huge mass of people crowed together in a small place as the UN compound. Any resulting inhumane treatment or killings can, in my view, only be linked to Bosnian Serb Forces in which specific evidence was adduced in this case that clearly establishes a link to the VRS. Condemnable as such instances may be, I am not persuaded that the generally frightening atmosphere amongst the Bosnian Muslim civilians can be characterised as widespread or attributable to the few Bosnian Serb soldiers around Potočari.

36. While, I concur with the Majority in that the conditions in Potočari were catastrophic and the population was eager to leave,[80] the conclusion I draw from this is different. In my view, it is exactly this deteriorating humanitarian situation that necessitated a quick transfer and an explanation of why civilians—in similar situations as Mirsada Malagić cited above—could not wait a moment longer for an evacuation. PW-063 stated he "never heard of any case of anybody who had expressed a desire to stay in the area, either in Srebrenica or in Bratunac".[81] It was his impression that those in Potočari wanted to leave Potočari and go to Tuzla as soon as possible.[82] Questioned about the conditions in Potočari by the Dutch Parliament DutchBat officer Leendert Van Duijn confirmed that it was simply not possible to stay under these conditions any longer. He added:

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76 *See supra* Judgement, para. 809; Mirsada Malagić, T. 10033 (16 February 2011).

77 PW-022, Ex. P00097, PT. 3934 (15 November 2006). PW-022 stated that some prominent officials or their families had a priority in the transportation and thus many ordinary people were unable to be on the UNHCR trucks and that there was a selection process as to who would be able to be on a truck. PW-022, Ex. P00096 (confidential), PT. 4040–4041 (private session) (16 November 2006); PW-022, T. 1107–1110 (14 April 2010). *See also* the evidence of a witness who testified that his sister left already in 1993 with an organized convoy. Salih Mehemedović, Ex. P01531 (15 June 2000), p. 3.

78 *See supra* Judgement, para. 206.

79 *See supra* Judgement, paras. 244, 869.

80 *See supra* Judgement, paras. 241–244.

81 PW-063, T. 6522 (19 October 2010).

82 PW-063, Ex. P00867, PT. 9316 (23 March 2007). *See also* Mirsada Malagić, T. 10033 (16 February 2011) ("everyone wanted to leave Potočari").

> There were 30,000 to 35,000 refugees packed in together into a small area, literally in their own defecation. Heavily pregnant women were there who started to give birth spontaneously. No, they really could not stay any longer at that place. That would not have been a good idea. Epidemics would have broken out then.[83]

(iii) The Hotel Fontana Meetings

37. With regard to the meetings held at the Hotel Fontana in Bratunac, the Majority found that Mladić conducted them in "an intimidating and dominant" manner.[84] I cannot agree to this finding for the following reasons. At the outset, in my view, it is important to be aware that the talks regarding the transportation of the population were initiated by UNPROFOR, after discussions with its leadership in Sarajevo.[85] In fact it was Karremans who stated during the First Hotel Fontana meeting that:

> In my opinion, this is the end of the enclave. And for the sake of the population, and not for the sake of the BiH, I should assist the population as much as possible, to get out of the enclave to, I don't know where they like to go. I think that most of them would like to go to Tuzla, I have been there once, three months ago. And in my opinion they have a better way of living there than what I have seen in the enclave. They are living in a very miserable way.[86]

38. It is clear from the above that Karremans felt that he should support the Bosnian Muslims' expressed wish to be transported safely out of the enclave and that he was looking to receive the VRS's assistance for this task. Mladić's reaction to this was that he "also want[ed] to help the civilian Muslim population because they [were] not responsible for what has happened" and therefore he initiated further talks at the Hotel Fontana, which included the attendance of representatives of the Bosnian Muslim civilians.[87] Contrary to the Majority, I for my part cannot see any actions of Mladić on the video footage admitted in this case done with a view to "humiliating" the participants. In fact, Mladić is welcoming, offering comforts to the attendees such as cigarettes,[88] beer, and sandwiches for lunch.[89] This pattern of behaviour continued during the third Hotel Fontana Meeting, in which Mladić offered his car to the daughter, grandchild, and mother of Čamila Omamović who asked for their safe evacuation.[90] Further, he extended such amenities to Bosnian Muslims present during the subsequent meetings at Bokšanica, offering for example a jacket to a freezing Hamdija Torlak.[91] That some people felt intimidated by him at these meeting, to

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83 Ex. D00324, p. 17.
84 *See supra* Judgement, para. 247.
85 Ex. P02798, Disc 1, 00:42:55, p. 17.
86 Ex. P02798, Disc 1, 00:48:28–00:49:30, pp. 19–20.
87 Ex. P02798, Disc 1, 01:00:24–01:01:40, p. 26.
88 Ex. P02798, Disc 1, 00:46:46–00:46:52, p. 18.
89 Ex. P02798, Disc 1, 01:08:22–01:09:30, pp. 31–32. As no beer was available, the soldiers were later provided with white wine mixed with mineral water. *Ibid.*, p. 32.
90 Ex. P02798, Disc 3, 00:12:57–00:13:12, p. 51.
91 Ex. P02798, Disc 4, 00:25:08–00:25:50, pp. 118–119.

me, is not surprising given that Mladić was a well-known general with a commanding presence in a situation of great uncertainty.

39. At the same time, the Majority focused on the evidence given by Rave and other attendees who perceived the sounds of a hog being slaughtered as a threat,[92] thereby ignoring that the evidence which points to another reasonable conclusion. In my view, the Majority should have instead focused on Exhibit D00037, which clearly states that "[p]ermission is granted for the slaughter and delivery [of a hog] for the needs of the UN soldiers billeted in the hotel in Bratunac".[93] While the Majority acknowledges the receipt of this Drina Corps Command document of 10 July 1995, it relies on Rave's testimony that he "doubted that POWs held at the Hotel Fontana were able to order food as they wanted".[94] However, nowhere in the Drina Corps Command document does it say that the DutchBat soldiers held at the Hotel Fontana ordered this hog for themselves. On the contrary, it was the VRS who ordered this hog to serve the needs of the DutchBat soldiers held in their captivity and in order to make sure that they were properly treated as POWs. For all these reasons, I conclude that nothing about the slaughtering of this hog is uncommon or gives rise to an intention to intimidate by the VRS.

(iv) The Transportation of the Bosnian Muslim Civilians

40. Contrary to the Majority, I do not believe that it was the VRS's aim to enhance the fear and chaos amongst the Bosnian Muslim civilians. In fact, it is not surprising that DutchBat needed to calm down such a large number of people in a small area as the UN compound. While it is true that "[*o*]*n some occasions*, Bosnian Serb Forces pushed and shouted at the Bosnian Muslim civilians to get on to the buses" as found by the Majority,[95] in my view, it is important to emphasise that such instances occurred only occasionally in a crowd of approximately 25,000–30,000 people. Moreover, evidence established that such instances were admonished by the VRS directly on the ground.[96] Van Duijn testified that:

> This happened occasionally. When it did happen, I was able to go and talk to the Serbian commander immediately and say, "That guy doesn't belong here, so get him away from here". He then did this. I witnessed an incident in which a young boy was nearly strangled. The Serbian commander then said to him, "You are a Serbian soldier, you do not belong here, you must go and stand 50 to 100 metres further back."[97]

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92 *See supra* Judgement, para. 251.
93 Ex. D00037.
94 *See supra* Judgement, n. 1010.
95 *See supra* Judgement, para. 278 (emphasis added).
96 *See, e.g.*, Ex. D00324, pp. 19–20.
97 Ex. D00324, p. 20.

In fact, while some members of the VRS and MUP may have created panic, others were deployed around the civilians to protect them.[98] Further, that the men were separated from the women, children, and elderly at that time in Potočari cannot constitute a terrorisation of the population as it was done with the intent, at that time, to legitimately screen for war criminals who were present in the enclaves.[99] In Potočari, Franken was under orders to cooperate with the aim that the evacuation was to "be done in the most humanitarian and legalised way".[100]

41. Moreover, the video footage does not show terrorisation of the population by the Bosnian Serb Forces; in fact, it shows the VRS providing food and water to the crowd. While the Chamber recalled that "[a] Serb camera crew filmed the distribution, by VRS soldiers, of candies to children, and of water and bread to the Bosnian Muslims",[101] the Majority went on to find that such distribution was "for propaganda purposes".[102] For this, they rely primarily on Rutten and Kingori,[103] but they do not rely on the evidence of Miroslav Deronjić in which he stated that they supplied some food and water over two days.[104] Without explanation, the Majority also omits the testimony of PW-063 who corroborates Deronjić in that he testified that assistance was distributed continuously throughout the day and the following day.[105] PW-063 testified that what they gathered "was probably insufficient, but we didn't have more than that".[106] PW-063 actually participated in handing out bread and milk and, therefore, is in a position to relay the intent of those who participated in the distribution.[107] It is notable, then, that PW-063 rejected as "preposterous" the suggestion that some of the items distributed were taken back from the civilians by Bosnian Serb Forces[108] and the items were not only given during filming.[109] Therefore, on the basis of this evidence, and with only the opinion of Rutten as interpreting this as "propaganda" or Kingori calling it "an act", I find that it is a reasonable conclusion that these were genuine efforts to assist the people who had gathered in Potočari and such actions do not comport with a plan to persecute the civilian population or terrorise them so as to drive them out.

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98 *See supra* Judgement, para. 275, n. 1139; Mendeljev Đurić, Ex. P01620, PT. 10807–10808 (2 May 2007).
99 *See infra* paras. 60–63.
100 Robert Franken, Ex. P00597, PT. 2680, 2682–2683 (18 October 2006). *See also* Eelco Koster, Ex. P01483, PT. 3094–3095 (26 October 2006).
101 *See supra* Judgement, para. 276.
102 *See supra* Judgement, n. 1147.
103 The Majority relies on Rutten and Kingori to state it was a staged scene, but relies additionally on PW-022 to support that some items were taken back after being distributed and Momir Nikolić to generally support that propaganda was a consideration in the VRS's actions in Potočari. *See also supra* Judgement, n. 1147.
104 Miroslav Deronjić, Ex. P00020a, BT. 6200 (19 January 2004). *See also supra* Judgement, n. 1147.
105 PW-063, Ex. P00867, PT. 9299 (23 March 2007).
106 PW-063, Ex. P00867, PT. 9208 (22 March 2007).
107 PW-063, Ex. P00867, PT. 9208 (22 March 2007).
108 PW-063, Ex. P00867, PT. 9315 (23 March 2007).
109 PW-063, Ex. P00867, PT. 9299 (23 March 2007).

42. The Majority's reliance on the testimony of several UNPROFOR members that the buses that were to transport the civilians arrived earlier than anticipated, thereby implying improper motives, is surprising to me.[110] In fact it was UNPROFOR that had discussed the transport of the civilians in detail with Mladić during the Hotel Fontana meetings and at least the higher ranking UNPROFOR and DutchBat soldiers were apprised of the agreements with regard to the transportation of the civilians from Potočari. In this regard, I note Franken's testimony on Exhibit P00608, a code-cable dated 12 July 1995 from Akashi to then Under-Secretary General Kofi Annan reflecting an UNPROFOR plan to evacuate the refugees from Srebrenica, which confirms that the UN had consented to the evacuation.[111]

43. In fact, Franken testified that Mladić had made an offer to the UN to carry out the evacuation.[112] Upon his return to Holland, Franken discovered that there had been a written agreement between Mladić and General Rupert Smith regarding the evacuation.[113] Franken explained that based on the content of the document, the fact that it referred to the evacuation of the women, children, and elderly, yet was signed after the latter had been completed, the document appeared to be a written confirmation of an earlier oral agreement between Mladić and Smith.[114] As testified further by Franken, because the UN was unable to carry out the evacuation by itself, it had agreed to the VRS doing so.[115] Clearly, the evacuation was discussed on all levels of the leadership, meaning at the level of the UN, by Akashi and Annan, at the level of the BiH leadership in Sarajevo, and on the ground at the level of UNPROFOR, in that case DutchBat. It is therefore to the credit of the VRS that they were able to mobilise the transport in a timely manner to assist; I do not draw from this the Majority's inference that the timely and efficient manner in which the VRS was able to support the transportation can be in any way indicative of criminal intent.

(v) Wish of the Civilian Population to Leave the Enclave Voluntarily

44. As evidence has established, once the buses started to arrive on 12 July in Potočari most of the Bosnian Muslim women, children, and elderly could not wait to rush onto them[116] in order to be transported to ABiH-held territory. In fact, in Potočari a stampede occurred during which, "people trampled each other underfoot to get onto the bus as quickly as possible", they "did not show any resistance in getting onto the bus", and "[t]hey really wanted to go on the buses. They wanted to get away from the enclave of Srebrenica"; the rush to leave was such that DutchBat needed to organise

110 *See supra* Judgement, para. 275.
111 Robert Franken, Ex. P00597, PT. 2559 (17 October 2006).
112 Robert Franken, Ex. P00597, PT. 2560 (17 October 2006).
113 Robert Franken, Ex. P00597, PT. 2553–2554 (17 October 2006).
114 Robert Franken, Ex. P00597, PT. 2691, 2696–2698 (18 October 2006); Ex. P00603.
115 Robert Franken, Ex. P00597, PT. 2560 (17 October 2006).
116 *See* Ex. D00324, p. 15.

the crowd in order to keep them under control.[117] Part of this wish was fuelled by a desire to be reunited with their men, who had made the decision to form a column to set out for Tuzla during the night of 11 July[118] in an attempt to breakthrough from the Srebrenica enclave.[119] The Chamber heard various examples of witnesses who decided to leave of their own accord, or because they would feel safer if they were to be evacuated.[120] Finally, several witnesses expressed their desire to return after the hostilities had ceased.[121]

45. Moreover, I recall Mladić's words during the last Hotel Fontana Meeting on 12 July, stating that:

> You can choose to stay or you can choose to leave. Just express your wish. If you wish to leave, you can go anywhere you like. When the weapons have been surrendered every individual will go where they say they want to go. The only thing is to provide the needed gasoline and I'll provide the vehicles.[122]

In doing so Mladić clearly left a choice for the population to make their own decisions. This, together with the evidence of all those civilians eager to leave, in my view, clearly establishes that the women, children, and elderly from Potočari left voluntarily in order to join their loved ones in ABiH-held territory, and were not forced onto the buses, as found by the Majority. Moreover, Deronjić confirmed that the Bosnian Muslim population was "to a large extent" transported towards Kladanj in a "correct manner".[123]

46. In light of the above I therefore respectfully dissent from the Majority finding that the Bosnian Muslim civilian population of Srebrenica was forcibly transferred out of Potočari.

(b) Forcible Transfer from Žepa

(i) Evacuation Plan by the War Presidency and the BiH Political Leadership

47. With regard to discussions on the part of the Bosnian Muslims concerning evacuation prior to the fall of Žepa, the Majority has held that such were only natural given the state of affairs in the enclave, and a direct result of VRS activities in the immediately preceding months and weeks.[124]

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117 Ex. D00324, pp. 15, 21.

118 *See supra* Judgement, paras. 237–240, 820. That the column was leaving voluntarily is, *inter alia,* confirmed by Ex. D00061; Ex. D00144; Ex. D00538; Ex. P01807, and Ex. P00988. *See also* Ratko Škrbić, T. 18839 (6 February 2012).

119 *See supra* Judgement, para. 316. *See also supra*, para. 31.

120 PW-017, Ex. P02883, KT. 1255–1256 (24 March 2000); Mirsada Malagić, T. 10036 (16 February 2011). *See also* Paul Groenewegen, Ex. P00098, BT. 1025 (10 July 2003).

121 Mevlinda Bektić, Ex. P01534 (16 June 2000), p. 5; Šifa Hafizović, Ex. P01527 (16 June 2000), p. 4; Nura Efendić, Ex. P01528 (21 June 2000), p. 5.

122 Ex. P02798, Disc 3, 00:10:37–00:10:51, p. 51.

123 Miroslav Deronjić, Ex. P00020a, BT. 6206 (19 January 2004). *See also* Ex. D00324, p. 22 (stating that people seemed frightened but no force was used during the boarding process).

124 *See supra* Judgement, para. 1035.

I disagree with this position. As in Srebrenica, as outlined above, people in fact wanted to leave already during the early stages of the conflict.[125] Hamdija Torlak testified that 65% of the population of Žepa came from other villages in the RS and were living in "very poor conditions".[126] People were eager to leave, however such requests were opposed by the ABiH.[127] Torlak testified, that "[p]eople wanted to leave because they were under a siege. It's only natural they wanted to leave".[128]

48. When, by early July, the fighting once more became fiercer, a series of meetings between the VRS and the Bosnian Muslims regarding the evacuation of the civilian population of Žepa were held.[129] However, it is important to note that by the time of the first meeting on 13 July,[130] Palić was already in ongoing consultations with the BiH political leadership in Sarajevo, discussing a possible evacuation of the civilian population.[131] In fact, documentary evidence establishes that already on 9 July, it was apparent that the civilian authorities intended to move the population out of the enclave as they pleaded with BiH President Alija Izetbegović and Delić to strike an urgent deal with the VRS to open the corridor for this purpose.[132] The term "moving out" thereby suggests a non-coerced removal of the population, as opposed to the term "evacuation".[133] These attempts are also further reflected in a report from Živanović to the Drina Corps Command on 13 July which states the following:

> We think that the Žepa leadership is ready for evacuation, but that the leadership in Sarajevo is having a negative influence on their decision. They are warning them through the media and in communication not to accept the Serbian propaganda and that adequate protection will be provided for them by the international community.
>
> We also estimate that Muslims from Žepa are applying the same tactics as in Srebrenica. They have probably decided that women and children should be evacuated in an organised way across the RS territory and the able-bodied population should cross illegally to Muslim territory. This is probably the reason they are avoiding a meeting, in order to buy time to evacuate the able-bodied men.[134]

49. These discussions, involving the political leadership of BiH, are further documented by correspondence between the Izetbegović and Delić on 18 July, and between Izetbegović and

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125 *See supra* Judgement, para. 202.
126 Hamdija Torlak, T. 4607 (30 August 2010); Ex. D00099, p. 1.
127 Hamdija Torlak, T. 4608 (30 August 2010); Ex. D00100.
128 Hamdija Torlak, T. 4607 (30 August 2010).
129 *See supra* Judgement, para. 604.
130 I further note that the Bosnian Muslims made the decision to enter into the negotiations with the VRS of their own accord irrespective of the position from Sarajevo, as they already had made up their mind at this stage to evacuate the civilian population out of Žepa. Hamdija Torlak, T. 4289–4291, 4296–4297, 4306–4307 (23 August 2010), T. 4615–4616 (30 August 2010). *See supra* Judgement, para. 606.
131 Hamdija Torlak, T. 4289–4290 (23 August 2010); Ex. P00127, p. 1. *See also* Ex. P02207 (a report by the Accused about a radio conversation between Kušić and Palić of 17 July in which he reports that Palić is in consultation with Sarajevo and is forbidden to carry out the evacuation without their approval). *See supra* Judgement, para. 605.
132 Ex. P00990; Ratko Škrbić, T. 18944–18947 (7 February 2012).
133 *See also* Ratko Škrbić, T. 18948 (7 February 2012).
134 Ex. P00127, p. 1.

Mehmed Hajrić on 19 July.[135] An example is Exhibit D00060 in which Izetbegović reports to Delić that:

> 1. I have just been talking to General Smith. Perhaps I could have women, children and the elderly from Žepa evacuated by UNPROFOR. Would you accept this?
>
> 2. Perhaps in this case we could insert a brigade (or battalion) of soldiers to Žepa across the forest path and thus continue the combat with more success.
>
> [...]
>
> 4. An evacuation plan for the population of Žepa has been made here in case items 1 and 2 above fail. I am sending it to you. I am waiting for your answers on the above.

These letters clearly establish that plans were prepared by the BiH political leadership for the civilian population to retreat from Žepa, whereas at the same time combat actions were coordinated to further engage in active combat activities with the VRS.[136]

50. Therefore, not only had the War Presidency from Žepa already made up its mind to evacuate the civilian population before the final military attack against Žepa commenced, but also the political leadership in BiH was discussing such a possible scenario which, in my view, cannot lead to the conclusion that in the negotiations with the VRS the evacuation of the civilian population was forced onto the Bosnian Muslims in any way.

(ii) Wish of the Civilian Population to Leave the Enclave Voluntarily

51. The Majority finds that the civilian population had no choice but to leave the enclave following VRS activities leading up to the fall of Žepa, including restrictions on humanitarian aid.[137] Contrary to the Majority, I believe, however, that the evidence adduced in this case suggests that the civilian population left the enclave of their own volition. As noted above, already during the early stages of 1995, as a result of the constant fighting between the VRS and the ABiH many civilians left the enclave without requesting approval from the local authorities.[138] As documented by evidence, in June 1995 the ABiH perceived such voluntary departures as a big problem as members of the ABiH and civilians were leaving and none of the measures taken by the military and civilian authorities helped to prevent the people from leaving.[139] Palić assessed that he would

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135 Ex. D00106; Ex. D00060; Ex. D00054.
136 Ex. D00060.
137 *See, e.g., supra* Judgement, paras. 196, 202, 647, 827.
138 Ratko Škrbić, T. 18843–18845 (6 February 2012); Ex. D00144. Additionally political friction between Palić and SJB chief Hurem Šehić caused the intellectuals and people capable of organising the life in Žepa to leave. Ex. D00055, paras. 11–12.
139 Ex. D00144, p. 1.

have to arrest 300 to 400 persons on a daily basis to prevent such illegal departures.[140] It is stressed that:

> [I]n the summer months [of 1995] it is as if some unknown wave flows through the people, suddenly creating a euphoria that the best solution is to leave for Tuzla. This literally causes waves throughout the entire area, and the majority of people are then ready to leave.[141]

This wish of the civilian population to leave was also shared by the War Presidency of Žepa which agreed itself that the civilians should be evacuated and that staying was not an option due to fear and the insecurity of the situation.[142]

52. Further, I cannot subscribe to the Majority's understanding that the houses of Bosnian Muslim inhabitants from Žepa could only have been burnt by Bosnian Serb Forces.[143] In fact, the Chamber heard evidence that VRS units set alight hay or small huts, not houses, and this lighting of haystacks was to mark their advance with smoke signals which was necessary given the type of the terrain.[144] Evidence further established that where odd incidents of burning did occur, Krstić even demanded his unit to act more responsibly.[145] Given this evidence, I cannot agree with the Majority's overall finding that the only reasonable conclusion was that these houses were burned by Bosnian Serb Forces. Taken in conjunction with Colonel Baxter's evidence that "many burning houses in the hills were apparently burned by departing Bosnian Muslims" in late July 1995, in my view, there are other reasonable conclusions to be made.

53. But also during the days of the evacuation itself, various people were eager to leave the enclave and expressed this wish throughout.[146] Their wish to leave, in my view, is not something that developed unexpectedly. Contrary to the Majority finding, I do not believe it can be determined that this wish was not genuine. On the contrary, as most of the male population of Žepa had fled to the woods, trying to break through to reach ABiH-held territory, there was nothing left for the women and children to stay for in Žepa. The departure of the Bosnian Muslim males from Žepa, in my view, was not the result of the unlawful actions of the VRS, but the outcome of a voluntary choice to retreat to ABiH–held territory rather than to mount any further defence of Žepa, which they considered to have been defeated. In fact, it is my position that, as with the civilians from Potočari, following this voluntary departure of their men, the women and children were eager to be transported out of Žepa in order to be reunited with their husbands and fathers in the ABiH-held

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140 Ex. D00055, para. 11.
141 Ex. D00144, p. 1.
142 Hamdija Torlak, T. 4375 (24 August 2010).
143 *See supra* Judgement, n. 2912.
144 Mirko Trivić, Ex. P01197, PT. 11906–11907 (22 May 2007); Mirko Trivić, T. 8734–8736, 8740 (10 December 2010).
145 *Ibid.*
146 Edward Joseph, Ex. P01949, PT. 14184 (23 August 2007); Edward Joseph, T. 10634–10635 (1 March 2011).

territory. UNPROFOR itself acknowledged in a report of 26 July that the civilians were not forced to leave but decided to do so as part of the total evacuation of the enclave.[147] Notably, and most importantly, the transportation process was not accompanied by any physical violence or force.

54. In this regard, I further note the history of the Žepa enclave. The vast majority of inhabitants in 1995 were in fact displaced persons from other smaller villages as a result of the war and did not originate from Žepa itself.[148] For this group, which did not have long-standing ties to homes and property in the enclave, staying in Žepa would have been even less appealing. Finally, as with the evidence regarding Srebrenica, the Chamber heard evidence of evacuees who returned to Žepa in later years,[149] and evidence of others who would like to return.[150]

55. Finally, there is also evidence of ten families who at first wanted to stay in Žepa in July 1995, which the Accused accepted without preconditions.[151] The evidence established that in the end everybody left the enclave, but the fact that people could express their wish of whether to stay or go, is a clear contradiction to the Majority's finding on the forced character of the displacement.

56. While I acknowledge the Accused's presence along with VRS members during the evacuations in Žepa, I do not agree with the Majority's finding "that he contributed to the threatening atmosphere during this process by pointing a pistol up at the sky, intended to frighten the Bosnian Muslims civilians".[152] In making its finding the Majority admits that "the Accused did not overtly threaten the inhabitants of Žepa",[153] but then relies on the evidence of Wood that pointing a pistol to the sky is "very threatening" and "not a normal conduct for a general".[154] I think it is important to state at the outset that I consider Wood to be one of the witnesses from outside BiH who were not wholly objective in their testimony, as described earlier in my preliminary remarks on the evaluation of evidence.[155] Further, Wood made it very clear that the Accused "wasn't pointing [his pistol] at anybody".[156] During his examination in court, Wood could not provide a reasonable answer as to why he himself, as somebody who had met the Accused on several other occasions, would not have simply asked the Accused to put the pistol down as he had the impression that it was frightening the people.[157] Further, I note Wood's conclusion of the situation in Žepa, including the fact that the Accused put his pistol up in the sky, constituted ethnic

147 Ex. D00175.
148 Ex. P00580, p. 3; Hamdija Torlak, T. 4260, 4263 (23 August 2010). *See supra* Judgement, para. 598.
149 Esma Palić, T. 13325 (27 April 2011) (returning eight years later).
150 Behara Krdžić, Ex. P02743 (16 June 2000), p. 3.
151 *See supra* Judgement, n. 2629.
152 *See supra* Judgement, para. 1092.
153 *See supra* Judgement, para. 982.
154 *See supra* Judgement, para. 643.
155 *See supra* paras. 15–17.
156 David Wood, T. 11104 (10 March 2011).

cleansing directed by the Accused; in doing so he even compared the situation to the Holocaust.[158] I find this description of Wood to be totally misplaced as it does not reflect the situation on the ground. I do not believe that the presence of a General with a pistol standing in the midst of 3,000 to 4,000 civilians, who were protected by their own ABiH General, conjures up a scenario that can be linked in any way to the Holocaust or ethnic cleansing.

57. In my view, the Accused was present in Žepa in his capacity as a professional soldier. Soldiers necessarily carry weapons, and in this case, he was overseeing and supporting the evacuation of the Bosnian Muslim civilians. In this process, he made sure that the population was transported safely out of the enclave and kept an eye on opportunistic criminals. The evidence is clear in that the Accused never threatened anybody or forced a single Bosnian Muslim civilian onto a departing bus. In fact, Torlak testified there were no non-combat related killings of military-age men from Žepa in the period while he participated in negotiations with the Accused.[159]

58. In light of the above I respectfully dissent from the Majority by finding that the Bosnian Muslim civilian population of Žepa did have a genuine choice of whether to stay or go and therefore was not forcibly transferred out of the enclave.

4. Accused's Participation in a JCE to Murder

59. The Majority in this case found that the Accused was a knowing participant in a JCE to Murder. For the following reasons, I respectfully dissent.

(a) Scope of the JCE to Murder

60. At the outset, I must express my disagreement with the finding that "there was no real effort on the part of the Bosnian Serb Forces to identify or register the Bosnian Muslim prisoners, whether for exchange, or to identify suspected war criminals".[160] While the Majority acknowledged Mladić's proposal to screen civilians for war criminals during the third Hotel Fontana meeting,[161] the Majority has failed to recognise that this is exactly what happened when the separations began.

61. In Potočari, DutchBat officials on the ground were told by the VRS that the men were separated out in order to detain and interrogate them in attempts to find those included on a list of suspected war criminals.[162] This list of alleged war criminals, dated 12 July 1995, is a part of the

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157 David Wood, T. 11115 (10 March 2011).
158 David Wood, T. 11104–11105 (10 March 2011).
159 Hamdija Torlak, T. 4790 (1 September 2010).
160 *See supra* Judgement, para. 1069.
161 *See supra* Judgement, para. 260.
162 *See supra* Judgement, para. 1048.

record of this case.[163] While the Majority concluded that such a list had no legitimate purpose of identifying suspected war criminals amongst the Bosnian Muslim men in Potočari, in my view, the existence of the list demonstrates that the separation of the able-bodied men was done with a view to identifying suspected war criminals and was a legitimate procedure, in fact a common process employed in times of war. In this regard, I note that the evidence also indicates that a similar list was used by the Accused during the boarding process in Žepa.[164]

62. A DutchBat officer, Van Duijn, testified "that the Serbs were on the look-out for [potential war criminals] was in itself a logical explanation".[165] In fact, in the Dutch Parliamentary Inquiry on Srebrenica, Van Duijn testified:

> The story told by the Serbian Commander to take the men aside, was always based on the statement that: We have a list of war criminals and we want to see whether the people we take aside are on this list. As soon as the passports and other personal possessions had been left behind, the story was no longer that they wanted to check which identity belonged to each man. So at that time I again confronted the Serbian commander with this story. I also asked him then why the men were not allowed to keep their passports. He told me that they would not be needing them any more. The earlier explanation which he had been giving me for two days now, was no longer true. [...] At the time [during the two subsequent days], I believed the statement made by the Serbs that they were removing the men to find out whether they were war criminals. If you think about it, this is exactly what we do. If you want to collect information, you have to separate certain groups of prisoners of war and you therefore keep the men apart to find out what information they can provide. So separating the men was not such a strange thing to do as such. We did get the impression, however, that the Muslim men would not be treated decently. However, when passports are no longer required, then it suddenly starts to dawn on you that something very terrible could happen. The fact that most of them would be killed, was, however incomprehensible at the time.[166]

Further, I cannot agree with the Majority that leaving belongings outside of the White House indicated any nefarious intent.[167] As indicated by at least one witness, any such order, if given, would have been done in line with reasons of security and safety.[168]

63. Therefore, at least in the beginning, the process of separation of the men in Potočari points to a legitimate purpose of screening for war criminals and is not indicative of any plan to murder. Further evidence in this regard continues even beyond Potočari in that "women and children, as well as those who appeared to be under the age of 18 who had been detained at the [Sandići] meadow were allowed to leave on those buses and trucks".[169] The fact that many men were later brutally executed by some criminally minded VRS soldiers is indicative of the possible start or the beginnings of the plan to murder the prisoners who were meant to be screened for war crimes, as outlined by the Majority. This plan to murder, in my view, was shared amongst this group which is

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163 Ex. P01098.
164 *See supra* Judgement, para. 660.
165 Ex. D00324, p. 14.
166 Ex. D00324, p. 26.
167 *See supra* Judgement, n. 1204.
168 Mile Janjić, Ex. P01096, BT. 9783–9784 (24 May 2004).

clearly identifiable. Again, the Accused's only connection to this group was the professional line of command.

64. While I agree with the Majority findings that a common plan to murder the able-bodied men from the Srebrenica enclave had materialized possibly by the morning of 12 July and "necessarily evolved sometime between 12 and 13 July to include [...] Bosnian Muslim men from the column",[170] I cannot support the Majority's finding on the scope of such a JCE, namely that it was "shared among and between numerous high-ranking VRS officers and implemented by countless members of the Bosnian Serb Forces".[171]

65. Rather, the evidence indicates that in the specific locations of the killings, small groups of VRS soldiers committed the killings and made the selection of who to kill. From the evidence on record, at the various execution sites, specific personal motives, such as revenge, were shown to be the reason why people were killed. The evidence before the Chamber shows:

> In the small building in Konjević Polje, amidst discussions of POW exchanges, it was one Bratunac MUP member who said that "he", specifically "intended to kill the prisoners".[172]
>
> In the Kravica Warehouse, the evidence demonstrates that the killings were set-off by a retaliatory action to a Bosnian Muslim prisoner who had taken a rifle from a member of the 2nd Šekovići Detachment and had killed one Bosnian Serb MUP member. Specifically, Kravica guards were "agitated" by shooting from outside saying "the Bosnian Muslims had attacked them".[173] In fact, the Chamber finds that "a Bosnian Muslim prisoner killed Krsto Dragičević which led to Čuturić sustaining burns to his hand and that this incident caused the Bosnian Serb guards to become agitated and angry and led to the shooting of many Bosnian Muslim prisoners in front of the warehouse as described by PW-006".[174] This incident clearly concerns a group that has taken off on their own. In the Chamber's findings, this accounted for at least 600-1,000 persons killed—notably, a significant part of the total numbers.[175]
>
> At the Kravica Supermarket, the Bosnian Serb Forces were asking for people from specific villages, "such as Glogova and Osmac"—this was witnessed by three separate witnesses in this trial at three separate times in Bratunac, once on the buses and once in the hangar behind the Vuk Karadžić School and once in the truck detained near "Vihor garages".[176]
>
> Likewise, at Petkovci School, soldiers entered and asked for prisoners from certain villages.[177]
>
> At the Luke School, a Bosnian Muslim girl, aged around 17, was brought to the area where PW-017 was detained on the evening of 13 July 1995 and asked to identify some of the Bosnian Muslim men.[178]

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169 *See supra* Judgement, para. 332.
170 *See supra* Judgement, paras. 1046–1047.
171 *See supra* Judgement, para. 1070.
172 *See supra* Judgement, para. 325.
173 *See supra* Judgement, para. 357.
174 *See supra* Judgement, para. 359.
175 *See supra* Judgement, para. 376.
176 *See supra* Judgement, paras. 377, 389, 394.
177 *See supra* Judgement, para. 446.
178 PW-017, Ex. P02883, KT. 1279–1280 (24 March 2000).

66. While I note that such revenge constitutes the crime of murder and the Kravica retaliation constituted an extraordinarily disproportionate and inappropriate "response", these facts outlining specific instances of these killings cannot be ignored in understanding the scope of the JCE to Murder. In my view, the evidence simply does not support a finding that the killings involved a plan of a wide net of Bosnian Serb Forces; rather, it is clear that it was a clique of criminally minded VRS soldiers who seised the opportunity to take revenge after years of bitter war, some possibly to avenge the deaths of relatives. Instead of these facts, the Majority is primarily relying on Momir Nikolić's testimony that it was "known" that these men would be killed to support its findings of a common plan—with Nikolić's knowledge coming from his understanding of an overheard conversation at midnight on the evening of 13–14 July 1995.[179]

67. Contrary to the Majority's finding of an over-arching plan to kill that permeated the VRS leadership, the Chamber heard evidence that members of the VRS—including the Accused—actively discussed POW exchanges on a number of occasions not only prior to the killings, but even in the days and weeks that followed. Most notably, the findings reflect that:

> On 13 July, "Malinić issued an order to his soldiers to register the prisoners in compliance with rules of the MP and nearly all the prisoners were listed";[180]
>
> Also on the morning of 13 July, "Beara sent four buses, two trucks, and one trailer truck to "Kasaba" for the transportation of captured Muslims, who "will be sent to a camp in the village of Batković, where a selection will be made between the war criminal [*sic*] or just soldiers";[181]
>
> On the evening of 13 July, "Jasikovac told members of the MP that they were to provide security for prisoners who were expected to arrive at the school. According to Jasikovac, the prisoners would "most likely" leave for Tuzla the next day;[182]
>
> On the morning of 14 July, "[Drago] Nikolić emerged from the meeting appearing angry, and told Birčaković that he had just learned that there would be some people coming in for exchange and that Birčaković was to drive Nikolić to the Vidikovac Hotel";[183]
>
> On 14 July at Grbavci School "a delegation of officers arrived and Mladić was spotted at the entrance to the gymnasium. The prisoners were told to prepare to be taken to the Batković Collection Centre;[184]

68. However, despite this affirmative evidence that POW exchanges were still being pursued, the Majority again relies on Momir Nikolić to infer that all such conversations and assurances by Bosnian Serb Forces on 13 July 1995 were blatant lies.[185] I cannot support such finding when it is clear that there are some members of the Bosnian Serb Forces, indeed in the VRS leadership, who

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179 *See supra* Judgement, paras. 402–403.
180 *See supra* Judgement, para. 338.
181 *See supra* Judgement, para. 338.
182 *See supra* Judgement, para. 414 (footnotes omitted).
183 *See supra* Judgement, para. 408 (footnotes omitted).
184 *See supra* Judgement, para. 424 (footnotes omitted).
185 *See supra* Judgement, para. 327.

did not support any such JCE to Murder. In particular, I note the Chamber's findings regarding Srećko Aćimović. It is clear from the evidence that he was not aware of any plan when he was alerted to the fact that men were being held at the Ročević School in the evening of 14 July 1995.[186] His first reaction was surprise at the state of affairs of both the prisoners and the soldiers at that location, enough so to contact the Zvornik Brigade Command.[187] Upon reaching Popović, he was told that he "should not put things in such dramatic terms" and that the prisoners would be exchanged the next morning".[188] Later on, when Popović requested him to supply men "for the execution of prisoners", Aćimović, in consultation with Vujo Lazarević, the Assistant Battalion Commander for Morale and Religious Affairs, and Mitar Lazarević, the General Affairs Officer, flatly refused such support.[189] Further evidence indicates that Popović and others were attempting to recruit "volunteers" to undertake such actions[190]—a task that should not be necessary if the entirety of the VRS leadership, or large portion thereof, was backing such a criminal endeavour. This evidence demonstrates that not only were some members of the VRS not informed of such a "common plan", even when informed of it, some did not support such criminal actions.

69. Further, it must be taken into account that the Chamber's findings include at least some of the Bratunac Brigade and its MP Battalion as tasked with protecting the prisoners from the civilian population as several witnesses testified to "an atmosphere of hate in Bratunac town during this period".[191] Similarly, the MP was dispatched to protect the prisoners from "[a]pproximately 100 local residents, some of whom were armed" who had gathered outside the Grbavci School stating that "[a]ll of [the prisoners] ought to be killed".[192] This evidence comports with the evidence on the record that the VRS placed a premium on prisoner exchanges, given the ongoing war and negotiations regarding Žepa—negotiations that were contingent upon prisoner exchange agreements.[193] It is reasonable to believe, then, that the VRS leadership would have sought to keep these POWs alive in order to use these men in exchanges. In fact, the evidence shows that many Bosnian Muslim men were successfully exchanged as POWs in July 1995 and thereafter.[194] This directly demonstrates, in my view, that not all VRS soldiers were involved in the brutal murder operation. Contrary to the Majority, I believe that there were also law-abiding and well-meaning

186 *See supra* Judgement, para. 460.
187 *See supra* Judgement, para. 461.
188 *See supra* Judgement, para. 461. Given his involvement prior to this stage, this indicates that Popović was spreading disinformation about the men detained to at least Aćimović.
189 *See supra* Judgement, paras. 461–464.
190 *See supra* Judgement, paras. 466, 496–500. In this regard, I also note that the fact that Popović was willing to accept a young man of 17–or 18–years–old as a volunteer to participate in killings further points to these crimes as being unsanctioned, extra-military endeavors.
191 *See surpa* Judgement, para. 388, n. 1671.
192 *See supra* Judgement, para. 419.
193 *See supra* Judgement, paras. 634–638.
194 *See supra* Judgement, para. 490, n. 2158.

soldiers who were operating under the normal processes that included abiding by the international rules governing POWs.[195]

70. Most notably, there are many facts that arose during the course of the trial that were inconsistent with an overall plan as found by the Majority. For example, if an all-encompassing, overarching VRS plan to murder the able-bodied Muslim men of Srebrenica and Žepa was in place at that time, there would be no need to endeavour to capture the men from the column or encourage them to surrender only to keep them alive in detention centres and continue to move those men to further locations, especially in an environment of fuel shortages. I further note the numerous instances on record in this case where VRS soldiers provided food or water to POWs.[196]

71. With regard to the men who set off from Šušnjari, Franken testified that the VRS was equipped in a way that "[i]f they wanted to kill everybody in that column, they could have done that".[197] Given such a stated capacity of the VRS, the number of men killed, while high, cannot alone create the necessary inference of an overarching JCE to Murder; as shown above, the rest of the evidence does not demonstrate that the whole of the VRS willingly participated in such a plan. Therefore, I cannot agree on the basis of the evidence in this case that the JCE to Murder encompassed the entirety of the Bosnian Serb Forces; it shows, rather, that the participants in the JCE to Murder consisted of a small, finite, identifiable group of rogue VRS members driven by personal motivations who took advantage of the situation they found themselves in on 12–13 July 1995.

(b) The Accused Lacked the Requisite Intent

72. In line with my reasoning above, I find that the Majority has erred in finding that the Accused participated in the JCE to Murder. The evidence simply does not support the proposition that, beyond reasonable doubt, he shared genocidal intent or any intent of furthering the JCE to Murder.

73. Without a single piece of evidence adduced during this trial of a written plan of a JCE to Murder, or any evidence of direct statements showing such an intent, the Majority relies upon circumstantial evidence to draw conclusions of a culpable *mens rea*. Primarily, the Majority relies upon the testimony of certain witnesses who have been convicted of crimes arising from events

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195 *See supra* Judgement, paras. 654–655, 675.

196 *See, e.g., supra* Judgement, paras. 323, 331, 337, 354, 385, 410, 416, 424, 485, 487. While in some of these instances the water or food provided is described as inadequate, given the circumstances of war I do not find this the fault of the Bosnian Serb soldiers; rather, I take note of the attempts made by these individuals to make accommodations for the prisoners as being contrary to an overarching plan to murder.

197 Robert Franken, Ex. P00598, PT. 2611 (17 October 2006).

alleged in the Indictment.[198] As outlined above, I cannot place reliance on the testimony of these witnesses and, therefore, find it impossible to draw inferences of a criminal intent of this Accused based on their testimony.[199] In my mind, such a finding of intent cannot be made beyond reasonable doubt especially when other actions of the Accused contradict such intention.

74. In this regard, the evidence shows a lack of the Accused's involvement in any JCE to Murder, with no evidence showing that he was even aware of the actions of those subordinate to him.[200] He is notably absent from the events as they unfolded in Srebrenica.[201] As shown in Acts and Conduct of the Accused,[202] the findings on the Accused's actions, knowledge, and whereabouts from 10–12 July 1995 are sparing.[203] I note that the findings reflect that on 10 July 1995 the Accused is engaged in conversations with Janvier about VRS attacks on UNPROFOR; the Accused's response is that he did not have information of that kind—described by the Majority as "denials" without further support—and statements that he had relayed the information to Mladić who had "exerted his influence to calm down the situation".[204] Thereafter, on 12 July 1995, the Accused is found to be in Bijeljina where he is arranging for 1,000–1,300 ABiH soldiers to be transferred to the Batković Collection Centre and issuing security alerts about the column of men—found to have included ABiH soldiers—attempting to break through.[205] Most striking in this particular section is that there is no evidence in this trial of where the Accused was or what he was doing on that critical day of 11 July 1995. By 13 July 1995, the Accused is again found to be dealing with negotiations related to solely to evacuations of Žepa and related POW exchanges.[206]

75. During and well after the killings were committed, the Accused was heavily engaged in the Žepa operations and, in this regard, was focused on negotiations for the evacuation of the civilian population as well as the surrender or capture of ABiH soldiers as a bargaining tool and for exchanges.[207] The evidence clearly shows that up until at least 13 July the Accused was of the mind that the men captured would be sent to the Batković Collection Centre for exchange.[208] From that date, we know no more of his knowledge other than that he responded that the idea to move them

198 *See supra* paras. 10–13.
199 *See supra* paras. 10–13.
200 In this regard, it should be noted that if the Majority relies upon Momir Nikolić to find the Accused was aware of his subordinate's actions, it must be considered that his evidence is that Beara was receiving his instructions from Mladić. According to Deronjić's testimony, Beara's orders could have been coming from Karadžić. *See supra* Judgement, para. 403.
201 *See supra* Judgement, paras. 930–933.
202 *See supra* Judgement, Chapter VIII. B. 3.
203 *See supra* Judgement, paras. 930–933.
204 *See supra* Judgement, paras. 930.
205 *See supra* Judgement, para. 931.
206 *See supra* Judgement, para. 934.
207 *See supra* Judgement, paras. 605, 617, 629.
208 *See supra* Judgement, para. 554.

there "had been given up on".[209] This cannot show beyond reasonable doubt that he knew the men would be killed; moreover, it does not show that he ever possessed the intent to join in the JCE to Murder.

76. On this point, the Majority relies heavily on Exhibit P00125 as showing that Accused proposed actions to be taken with regard to more than 1,000 Bosnian Muslims captured in the Kasaba area.[210] With regard to Exhibit P00125, I must first state my dissent to the admissibility and use of a document so heavily contested. The inconsistencies pointed to by the Majority as not problematic, in my opinion, cast certain doubt on the reliability of the document—in particular, that it was questioned by both Savčić and Malinić as illogically containing both an order and a proposal, that Savčić could not recall drafting it,[211] Malinić did not recall receiving it, and the fact that it was unsigned. As such, I would not rely on this document for making significant findings as the Majority has in this case.[212]

77. Even if accepted as reliable, it does not reflect knowledge of a "despicable plan" as contained in the Majority's finding that "[t]he Accused's proposed measures, in the Majority's opinion, reflect the coordinated effort to conceal the despicable plan contemplated among the members of the JCE to Murder."[213] I cannot agree. On a plain reading of the document, it indicates no more than the Accused's proposal for measures to be taken for POWs who were thought to be from the 28th Division;[214] the duty to make proposals for captured POWs was entirely in line with the Accused's legitimate role in POW exchanges.[215] Malinić, in reviewing the document, testified:

> I don't know why it is so important. Maybe my perception is too narrow, but I don't see anything in this order that would be wrong. In this proposal/order, I don't see anything that has to do with the time and area of combat operations that be would [*sic*] wrong. All armed forces in the world work the same way.[216]

78. As the Accused was engaged in negotiations in Žepa on 13 July specifically, I cannot help but come to another reasonable conclusion that the Accused may well have been trying to ensure that the VRS held these POWs for specific use in these ongoing negotiations with regard to Žepa, so that they could be released to UNPROFOR or sent to the Batković Collection Centre where they could be exchanged for POWs in other parts of BiH. In fact, this number comports with Exhibit D00049 in which the Accused, later in the same evening, is seeking accommodation for these same

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209 *See supra* Judgement, para. 555.
210 *See supra* Judgement, para. 1103.
211 In this I note his testimony that he could not exclude the possibility that he did draft this document. *See supra* Judgement, para. 940.
212 *See supra* Judgement, paras. 937–944.
213 *See supra* Judgement, para. 1103.
214 Ex. P00125.
215 *See supra* Judgement, para. 920.
216 Zoran Malinić, T. 15375 (9 June 2011).

men and making a suggestion of where at least 800 could be located.[217] A week later, at the Sarajevo Airport meeting of 20 July, a prisoner exchange agreement specifically included "new captives from Srebrenica".[218] The tentative agreement reached on 25 July 1999 specifically stipulated that: "UNPROFOR shall be requested to facilitate an exchange of all POWs held by both sides (between 500 and 1,000 people)".[219] Given the consistency of his actions in securing these POWs and continuing attempts to use these prisoners for exchange, I find that it is also reasonable that the Accused believed these men were alive and available for exchange and was not apprised of the massive killings that had taken place. Moreover, it is also reasonable to believe that those involved in the JCE to Murder had secreted such actions from their superiors—including the Accused—as those who could take actions against them. Criminal actions, by their very nature, are not typically overt.

79. Further, the record demonstrates that the Accused's other actions and instructions were inconsistent with a genocidal or murderous intent. The Majority places great reliance on Exhibit P00488 by its reading of the document as including Bosnian Muslim civilians as intended victims.[220] However, given that the purpose of his Intelligence Sector was being one-step ahead of the ABiH actions,[221] another reasonable interpretation of this document is as put forth by the Accused in his submissions—that he was suggesting the destruction of empty locations that were identified as being potential locations to which the Bosnian Muslim population, including ABiH soldiers, could relocate.[222] The vast array of the Accused's orders and instructions are notably absent of any type of focus on the civilian population that could support such an intent. In fact, several of his directions, both before and after the issuance of Exhibit P00488, indicate caution taken to protect the civilian population in combat manoeuvers. For example:

> On 9 July 1995, when the Accused relayed the President's order, it was specified that "full protection be ensured to UNPROFOR members and the Muslim civilian population and that they be guaranteed safety in the event of their cross-over to the territory of Republika Srpska", and in this regard, Krstić was ordered to issue an order to subordinate units implementing the President's direction.[223]
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> On 25 July 1995, when POWs were taken off a bus, the Accused gave oral orders to ensure their good care and directed Čarkić to issue a report to further ensure their care including provisions for

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217 Ex. D00049.
218 *See supra* Judgement, para. 623.
219 *See supra* Judgement, para. 635.
220 *See supra* Judgement, paras. 626, 973–974, 1090–1091, n. 2698.
221 *See supra* Judgement, Chapter III. B. 9.
222 *See* Accused Closing Argument, T. 19525–19526 (22 August 2012).
223 Ex. D00041. *See also* Richard Butler, T. 16581–16582 (13 July 2011) (characterising the Accused's words as "relaying" the order of the President rather than constituting an actual order on their own).

> proper meals, medical care, opportunity for prayer, and ICRC registration.[224] When prisoners complained that they had been robbed of their money, the Accused launched an investigation.[225]
>
> Moreover, the cease-fire agreement reached in October 1995 was sent to the VRS Main Staff by the Accused and provided for "humane treatment of all civilians and prisoners of war".[226]

Such specific examples go against an inference of any culpable *mens rea* of the Accused as found by the Majority.

5. Killings of Hajrić, Palić, and Imamović

80. With regards to the killings of Hajrić, Palić, and Imamović from Žepa, the Majority found their murder to have been "a case of deliberate destruction of a limited number of persons" whose disappearance had an impact on the survival of the entire group as such as they enjoyed a special status as the "defender of the Bosnian Muslims of Eastern BiH". It concluded therefore that the Bosnian Serb Forces killed those men with the specific genocidal intent of destroying a part of the Bosnian Muslim population as such.[227]

81. I respectfully dissent from the Majority in its finding. At the outset I note that there is no showing of the Accused's intention to target these men as community leaders; in fact, while the Accused personally removed Hajrić from a bus in Bokšanica, his only stated reason for this removal was that "he is a man of military age".[228] While, in my view, the later killings of Hajrić, Palić, and Imamović were probably connected with the positions that they held, in this particular instance it was one military leader and two political leaders who were killed. This is particularly important when considering that the Bosnian Serb Forces did not kill the totality of the leadership despite the opportunity that they had for doing so. Hamdija Torlak, the President of the Executive Board of Žepa, was held in the same prison as Hajrić and Imamović, but he was not killed and was ultimately exchanged with the remaining prisoners in January 1996.[229] While it is evident that the VRS imprisoned Hajrić, Palić, and Imamović because of their respective positions in Žepa, I believe that too little is known of the circumstances and the reasons for their killings. What is known to the Chamber demonstrates that the respective evidence is very weak, since it is based mainly on witness testimony, among which two witnesses only referred to rumours, and one was somewhat contradictory as to what happened to Palić.[230] None of the evidence sheds light on the concrete circumstances of their killing. Moreover, in the particular case of Palić, he was kept alive for a

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224 *See supra* Judgement, paras. 659, 999.
225 *See, e.g., supra* Judgement, n. 2852.
226 Ex. D00263, p. 3. *See also supra* Judgement, para. 1005.
227 *See supra* Judgement, para. 782.
228 *See supra* Judgement, para. 988.
229 *See supra* Judgement, para. 665.
230 *See supra* Judgement, nn. 2923–2924.

period of time after the events in Žepa.[231] In my view, therefore, a finding that they were killed with the intent to destroy part of a protected group as such is just a step too far.

82. In my view, their killing may be ascribed to the well-established hostility between the Bosnian Serbs and the Bosnian Muslims, which in this case may have been enhanced by a desire to pay off old scores against prominent figures on the opposing side after several years of bitter armed conflict and decades-long hatred between Bosnian Muslims and Bosnian Serbs. As therefore there is not sufficient evidence for the killings of Hajrić, Palić, and Imamović to be attributable to discriminatory intent, I cannot find, based on the evidence available, that those three men were selected to be killed for the impact that their disappearance would have on the survival of the group as such. Therefore, I find that the killings of the three men cannot be attributed to the crime of genocide but rather were opportunistic killings taken by unknown individuals in the chaos of war. After all, opportunistic killings, as the word implies, are not planned but occur as an opportunity arises.

83. Accordingly, I cannot find that the specific genocidal intent of destroying part of the Bosnian Muslim population has been proven beyond reasonable doubt with regard to the killing of the three Bosnian Muslim leaders and therefore dissent from the Majority's finding in this regard.

6. Total Numbers Killed

84. With regard to the total numbers killed in the incidents of the Judgement, I am in agreement with Chamber's findings that are supported by evidence of witnesses and documentary evidence to support such numbers.[232] There is evidence on record indicating that several hundred bodies were found with ligatures and blindfolds in a number of mass-graves. I am able to conclude beyond reasonable doubt that these were murdered by members of Bosnian Serb Forces. Further this number associated with blindfolds and ligatures will increase taking into account the numbers killed at Kravica Warehouse where although no ligatures and blindfolds were used I find like the Majority that the prisoners there were murdered. However, without further forensic evidence for a certain number for whom the evidence is not as clear, I cannot be convinced beyond reasonable doubt that the deaths meet the elements of murder. The evidence in this case shows that many in the column were killed in combat—possibly as many as 3,000 men.[233] Therefore, owing to this evidence citing other causes of death at that time as noted by the Chamber—including combat-related killings, suicide, in-fighting, and natural circumstances[234]—I cannot hold beyond reasonable doubt that

231 *See supra* Judgement, paras. 677–679.
232 *See supra* para. 65.
233 *See* Ex. D00122, p. 86; Ex. P00991, 00:33:15–00:36:46.
234 *See supra* Judgement, paras. 592–594.

these bodies were victims of murder at the hands of the Bosnian Serb Forces, and, therefore, I must dissent from the Majority holding that these causes of death were "very much a minority".[235] As stated in the Judgement:

> [T]he Chamber does not have the evidence before it to make the finding that these deaths constituted a minority of the Srebrenica-related missing.[236]

7. Conclusion

(a) The Allegations based on Forcible Transfer

85. Contrary to the Majority holdings, I dissent from the holding that a JCE to Forcibly Remove the Bosnian Muslim population existed among the Bosnian Serb Forces and RS leadership. I do not find that there was a common purpose for such criminal enterprise, rather, I find that the populations of the enclaves sought to leave and, with assistance of the ABiH and Žepa War Presidency, negotiated an evacuation of the people based on war-time necessity. Consequently, I cannot find that any "forcible transfer" contributed to a finding of genocide or conspiracy to commit genocide. Nor can I find, based on the totality of evidence on the record, that the Bosnian Muslim civilians of the Srebrenica and Žepa enclaves were persecuted by Bosnian Serb Forces with the requisite specific intent. As I have not found the underlying crime of Forcible Transfer or a JCE to Forcibly Remove the populations of the enclaves, I cannot find the Accused criminally responsible for these movements under any mode of liability.

(b) The Nature of the JCE to Murder

86. Additionally, while I find that a JCE to Murder the Bosnian Muslim men spontaneously arose on 12–13 July 1995, I dissent to the Majority holding that a JCE to Murder was a "highly organised murder operation developed and shared among and between numerous high-ranking VRS officers and implemented by countless members of the Bosnian Serb Forces".[237] To my mind, the "spontaneity" of that JCE, one that called upon volunteers to carry forth the murders, also leads to the reasonable conclusion that it arose out of a small group of individuals operating in an unauthorised and secreted manner. However, I find that the killing of the three Bosnian Muslim leaders was separate from this JCE and was committed by opportunistic individuals at unknown times, potentially long after the events in Srebrenica and Žepa.

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235 *See supra* Judgement, n. 2588.
236 *See supra* Judgement, n. 2588.
237 *See supra* Judgement, para. 1070.

(c) The Alleged Responsibility of the Accused for Murder

87. Moreover, I find there is neither a showing of a significant contribution to the JCE to Murder by the Accused nor the requisite intent of JCE I "to perpetrate a crime" with the shared intent of others. Therefore, I cannot find that the Accused was a member of the JCE to Murder and, therefore, find that he is not liable for actions within the common purpose of the JCE to Murder. Since the Accused was not a member of the JCE to Murder, the question of his responsibility for crimes outside the common purpose of the JCE that were the natural and foreseeable consequences of it does not arise. In this regard, I do not find that the evidence supports that the Accused otherwise directly committed, planned, instigated, ordered, or otherwise aided and abetted in the planning, preparation, and execution of these crimes.

(d) Findings on the Individual Counts

88. With regard to Count 1 (genocide), I have found that the Accused did not have the requisite intent for genocide. In addition, since I have found that the Accused was not responsible for murder and that forcible transfer from Srebrenica and Žepa and the associated ill-treatment of the civilian population did not take place, there is no basis for finding that the Accused committed any of the underlying acts of Genocide as set forth in Article 4(2) of the Statute and as alleged by the Prosecution in the Indictment. I therefore conclude that the Accused is not criminally responsible for the crime of genocide, as alleged in Count 1 of the Indictment. I should point out that in drawing this conclusion about the Accused's criminal responsibility, I do not address the question of whether genocide was committed after the fall of Srebrenica.

89. Since the Accused did not have the requisite intent for genocide, he cannot be found to be criminally responsible for conspiracy to commit genocide under Count 2 of the Indictment.

90. The Accused is not responsible for murder under any mode of liability. It therefore follows that he should be acquitted of the charges of murder as a crime against humanity and as a violation of the laws or customs of war under Counts 4 and 5 respectively. Since the Accused is not responsible for murder, he cannot be held responsible for extermination as a crime against humanity under Count 3, because extermination is murder on a massive scale.

91. I have found above that the Accused is not responsible for the movement of the Bosnian Muslim civilians of the Srebrenica and Žepa enclaves under any mode of liability. It therefore follows that the Accused is not criminally responsible for the crime of inhumane acts through forcible transfer as a crime against humanity under Count 7.

92. In the Indictment it is alleged that the Accused is responsible for the crime of persecutions which was carried out through the following means: (a) the murder of Bosnian Muslim civilians, (b) the cruel and inhumane treatment of Bosnian Muslim civilians, (c) the terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari, (d) the destruction of personal property and effects belonging to the Bosnian Muslims and (e) the forcible transfer of the Bosnian Muslims from Srebrenica and Žepa. Since I do not find the Accused to be criminally responsible for the crime of murder, I cannot find him responsible for the crime of persecutions through the murder of Bosnian Muslim civilans. Since in my opinion there was no forcible transfer from Srebrenica and Žepa, I cannot find the Accused responsible for persecutions through the forcible transfer of the Bosnian Muslims from Srebrenica and Žepa. He cannot be responsible either in my opinion for persecutions in so much as I do not consider that there was a plan that included cruel and inhumane treatment of civilians or terrorising of civilians in Srebrenica or Žepa. As he was not a member of either, the alleged JCE to Forcible Remove or the alleged JCE to Murder, there are no grounds for finding him to be criminally responsible for the crime of persecutions through the destruction of personal property and effects belonging to the Bosnian Muslims.

93. On the totality of the evidence on the record, I am wholly unpersuaded that the Accused is guilty of any of the charges alleged in the Indictment and therefore find the Accused **Zdravko Tolimir NOT GUILTY** pursuant to Article 7(1) of the Statute of the following counts:

Count 1: Genocide under Article 4(3)(a) of the Statute;

Count 2: Conspiracy to Commit Genocide under Article 4(3)(b) of the Statute;

Count 3: Extermination, a crime against humanity under Article 5(b) of the Statute;

Count 4: Murder, a crime against humanity under Article 5(a) of the Statute.

Count 5: Murder, a violation of the laws or customs of war under Article 3 of the Statute;

Count 6: Persecutions, a crime against humanity under Article 5(h) of the Statute;

Count 7: Inhumane Acts through Forcible Transfer, a crime against humanity under Article 5(i) of the Statute.

94. As indicated in the Judgement, I concur with the Majority in finding the Accused **NOT GUILTY** under Count 8 (Deportation).

95. Given the above findings, I would **ACQUIT** the Accused **Zdravko Tolimir** on all eight (8) counts as charged in the Indictment.

B. Separate and Concurring Opinion of Judge Nyambe

1. Bodies of Nine Bosnian Muslim Men Found Near the UN Compound

96. As found in the Judgement, there is not sufficient reliable evidence before the Chamber to find that the killing of the nine men in Potočari was attributable, beyond reasonable doubt, to the Bosnian Serb Forces. I note that it is clear from the case record that there were approximately 25,000–30,000 people on the ground in Potočari during these days, any of whom could have caused the deaths of these nine men. In fact, little to nothing is known about the circumstances of their deaths.

97. What is known to the Chamber is based largely on the testimony of Johannes Rutten. It must be said, in line with my dissent,[238] that I find Rutten's evidence on this matter of great concern. In this instance, Rutten, as a blue-helmet peacekeeper, destroyed exactly the evidence that one would need to properly document the violations in a report; yet the reasons he gives for such order for destruction raise severe doubt.[239] Likewise troubling is that the photos of the nine bodies, which were sent for developing to a laboratory in the Netherlands, were destroyed under peculiar and unknown circumstances; the Chamber is left with the unsatisfactory explanation that "something had happened during the development and the photos were never developed or seen".[240] Taken all this together, I can only conclude that Rutten's evidence regarding the nine bodies leaves more questions than answers.[241]

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238 *See supra* para. 15.
239 *See supra* Judgement, para. 305.
240 *See supra* Judgement, para. 305; Johannes Rutten, T. 17803 (12 September 2011).
241 *See supra* Judgement, para. 308.

Done in English and French, the English text being authoritative.

Prisca Matimba Nyambe
Judge

Dated this twelfth day of December 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX A: GLOSSARY

A. Filings in this Case

Accused Final Brief	Defence Final Trial Brief with Corrigendum, 4 October 2012 (English translation), 1 October 2012 (BCS original)
Accused Final Brief (confidential)	Defence Final Trial Brief, confidential, 16 July 2012 (English translation), 11 June 2012 (BCS original)
Accused Pre-Trial Brief	Zdravko Tolimir's Submission with a Pre-Trial Brief Pursuant to Rule 65 ter (F) and Notification of the Defence of Alibi in Respect of Some Charges, 28 October 2009 (English translation), 30 September 2009 (BCS original)
Adjudicated Facts Decision	Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 17 December 2009
Indictment	Third Amended Indictment, 4 November 2009
Prosecution Pre-Trial Brief	Prosecution's Amended Pre-Trial Brief, filed Pursuant to the Trial Chamber's Decision on Accused's Preliminary Motion Pursuant to Rule 72(A) (ii), 16 February 2010
Prosecution Final Brief	Prosecution Re-Filing of Public Redacted Version of Its Final Trial Brief, 29 November 2012
Prosecution Final Brief (confidential)	Corrigendum: Re-submission of Prosecution's Final Trial Brief with Omitted Page from Appendix, confidential, 12 June 2012

B. ICTY Judgements and Decisions

Aleksovski Appeal Judgement	*Prosecutor v. Zlatko Aleksovski*, Case No. IT-95 14/1-A, Appeal Judgement, 24 March 2000
Babić Sentencing Appeal Judgement	*Prosecutor v. Milan Babić*, Judgement on Sentencing Appeal, Case No. IT-03-72-A, 18 July 2005
Banović Sentencing Judgement	*Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003

Blagojević and Jokić Appeal Judgement	*Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgement, 9 May 2007
Blagojević and Jokić Trial Judgement	*Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005
Blaškić Trial Judgement	*Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000
Blaškić Appeal Judgement	*Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004
Boškoski and Tarčulovski Appeal Judgement	*Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Judgement, Case No. IT-04-83-A, 19 May 2010
Boškoski and Tarčulovski Trial Judgement	*Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Judgement, Case No. IT-04-82-PT, 10 July 2008
Bralo Sentencing Appeal Judgement	*Prosecutor v. Miroslav Bralo,* Case No. IT-95-17-A Judgement on Sentencing Appeal, 2 April 2007
Brđanin Appeal Judgement	*Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Judgement, 3 April 2007
Brđanin March 2004 Interlocutory Appeal Decision	*Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Interlocutory Appeal, 19 March 2004
Brđanin Trial Judgement	*Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Judgement, 1 September 2004
Čelebići Appeal Judgement	*Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "PAVO"), Hazim Delić, and Esad Landžo (aka "ZENGA")*, Case No. IT-96-21-A, Judgement, 20 February 2001
Čelebići Trial Judgement	*Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "PAVO"), Hazim Delić, and Esad Landžo (aka "ZENGA")*, Case No. IT-96-21-T, Judgement, 16 November 1998
Deronjić Sentencing Trial Judgement	*Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-S, Sentencing Judgement, 30 March 2004
Deronjić Sentencing Appeal Judgement	*Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005
Đorđević Trial Judgement	*Prosecutor v. Vlastimir Đorđević,* Case No. IT-05-87/1-T, Public Judgement with Confidential Annex, 23 February 2011

Erdemović Sentencing Judgement	*Prosecutor v.Dražen Erdemović*, Case No. IT-96-22-Tbis, Sentencing Judgement, 5 March 1998
Erdemović Appeal Judgement	*Prosecutor v. Dražen Erdemović*, Case No. IT-96-22-A, Judgement, 7 October 1997
Furundžija Appeal Judgement	*Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000
Furundžija Trial Judgement	*Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998
Galić Appeal Judgement	*Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006
Galić Trial Judgement	*Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003
Gotovina and Markač Appeal Judgement	*Prosecutor v. Ante Gotovina and Mladen Markač,* Judgement, Case No. IT-06-90-A, 16 November 2012
Gotovina et al. Trial Judgement	*Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač,* Case No. IT-06-90-T, 15 April 2011
Hadžihasanović and Kubura Appeal Judgement	*Prosecutor v. Enver Hadžihasanović and Amir Kubara,* Case No. IT-01-47-A, Judgement, 22 April 2008
Halilović Appeal Judgement	*Prosecutor v. Sefer Halilović,* Case No. IT-01-48-A, Judgement, 16 October 2007
Haradinaj et al. Trial Judgement	*Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj,* Case No. IT-04-84-T, Judgement, 3 April 2008
Jelisić Appeal Judgement	*Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001
Jelisić Trial Judgement	*Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Judgement, 14 December 1999
Jokić Sentencing Judgement	*Prosecutor v. Miodrag Jokić.* Case No. IT-01-42/1-S, Sentencing Judgement, 18 March 2004
Jokić Sentence Appeal Judgement	*Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1, Judgement on Sentencing Appeal, 30 August 2005
Karadžić June 2009 Appeal Decision	*Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR72.4, Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability, 25 June 2009

Kordić and Čerkez Appeal Judgement	*Prosecutor v. Dario Kordić, and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004
Kordić and Čerkez Trial Judgement	*Prosecutor v. Dario Kordić, and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001
Krajišnik Trial Judgement	*Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006
Krajišnik Appeal Judgement	*Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009
Krnojelac Appeal Judgement	*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement, 17 September 2003
Krnojelac Trial Judgement	*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002
Krstić Appeal Judgement	*Prosecutor v Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004
Krstić Trial Judgement	*Prosecutor v Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001
Kunarac et al. Appeal Judgement	*Prosecutor v. Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković*, Case No. IT-96-23&23/1-A, Judgement, 12 June 2002
Kunarac et al. Trial Judgement	*Prosecutor v. Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković*, Case No. IT-96-23&23/1-T, Judgement, 22 February 2001
Kupreškić et al. Appeal Judgement	*Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, and Vladimir Santić*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001
Kupreškić et al. Trial Judgement	*Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, and Vladimir Santić, also known as "VLADO"*, Case No. IT-95-16-T, Judgement, 14 January 2000
Kvočka et al. Appeal Judgement	*Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić, and Dragoljub Prcać*, Case No. IT-98-30/1-A, Judgement, 28 February 2005
Kvočka et al. Trial Judgement	*Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić, and Dragoljub Prcać*, Case No. IT-98-30/1-T, Judgement, 2 November 2001

Limaj et al. Trial Judgement	*Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu*, Case No. IT-03-66-T, Trial Judgement, 30 November 2005
Limaj et al. Appeal Judgement	*Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu*, Case No. IT-03-66-A, Judgement, 27 September 2007
Lukić and Lukić Trial Judgement	*Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Judgement, 20 July 2009
Martić Trial Judgement	*Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Judgement, 12 June 2007
Martić Appeal Judgement	*Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008
Milošević Appeal Judgement	*Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009
Milutinović et al. May 2003 Appeal Decision	*Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction—Joint Criminal Enterprise, 21 May 2003
Milutinović et al. Trial Judgement	*Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić*, Case No. IT-05-87-T, Judgement, 26 February 2009
Mrkšić and Šljivančanin Appeal Judgement	*Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Judgement, 5 May 2009
Mrkšić et al. Trial Judgement	*Prosecutor v. Mile Mrkšić, Miroslav Radić, and Veselin Šljivančanin*, Case No. IT-95-13/1-T, Judgement, 27 September 2007
Mrkšić and Šljivančanin Rule 61 Decision	*Prosecutor v. Mile Mrkšić, Miroslav Radić, and Veselin Šljivančanin*, Case No. IT-95-13-R61, Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 3 April 1996
Naletilić and Martinović Trial Judgement	*Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-T, Judgement, 31 March 2003
Naletilić and Martinović Appeal Judgement	*Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Judgement, 3 May 2006
Nikolić Sentencing Appeal Judgement	*Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006

Orić Appeal Judgement	*Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Judgement, 3 July 2008
Orić Trial Judgement	*Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Judgement, 30 June 2006
Perišić Trial Judgement	*Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, 6 September 2011
Plavšić Sentencing Judgement	*Prosecutor v. Biljana Plavšić*, Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003
Popović et al. Trial Judgement	*Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero, and Vinko Pandurević*, Case No. IT-05-88-T, Judgement, 10 June 2010
Sikirica et al. Judgement on Motions to Acquit	*Prosecutor v. Duško Sikirica, Damir Došen, and Dragan Kolundžija*, Case No. IT-95-8-T, Judgement on Defence Motions to Acquit, 3 September 2001
Simić Sentencing Judgement	*Prosecutor v. Milan Simić*, Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002
Simić Appeal Judgement	*Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement, 28 November 2006
Simić et al. Trial Judgement	*Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić*, Case No. IT-95-9-T, Judgement, 17 October 2003
Stakić Appeal Judgement	*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006
Stakić Trial Judgement	*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003
Strugar Appeal Judgement	*Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, 17 July 2008
Strugar Trial Judgement	*Prosecutor v. Pavle Strugar, Miodrag Jokić, and Vladimir Kovačević*, Case No. IT-01-42-T, Trial Judgement, 31 January 2005
Tadić Appeal Judgement	*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999
Tadić First Sentencing Judgement	*Prosecutor v. Duško Tadić a.k.a "Dule"*, Case No. IT-94-1-T, Sentencing Judgement, 14 July 1997

Tadić Jurisdiction Decision	*Prosecution v. Duško Tadić*, Case No. IT-94-1-AR72, Appeals Chamber Decision on Jurisdiction, 2 October 1995
Tadić Second Sentencing Judgement	*Prosecutor v. Duško Tadić*, Case No. IT-94-1-T*bis*-R117, Sentencing Judgement, 11 November 1999
Tadić Sentencing Appeal Judgement	*Prosecutor v. Duško Tadić a.k.a "Dule"*, Case No. IT-94-1-T *bis* R117, Sentencing Judgement, 11 November 1999
Tadić Trial Judgement	*Prosecutor v. Duško Tadić a.k.a "Dule"*, Case No. IT-94-1-T, Judgement, 7 May 1997
Trbić Rule 11 *bis* Decision	*Prosecutor v. Milorad Trbić*, Case No. IT-05-88/1-PT, Decision on referral of case under Rule 11 bis with confidential annex, 27 April 2007
Vasiljević Appeal Judgement	*Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgement, 25 February 2004
Vasiljević Trial Judgement	*Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002
Zelenović Sentencing Appeal Judgement	*Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-A, Judgement on Sentencing Appeal, 31 October 2007

C. ICTR Judgements and Decisions

Akayesu Trial Judgement	*Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998
Bagosora et al. Trial Judgement	*Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Judgement and Sentence, 18 December 2008
Bikindi Trial Judgement	*Prosecution v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement, 2 December 2008
Bikindi Appeal Judgement	*Simon Bikindi v. Prosecutor*, Case No. ICTR-01-72-A, Judgement, 18 March 2010
Gacumbitsi Appeal Judgement	*Sylvestre Gacumbitsi v. Prosecutor*, Case No. ICTR-2001-64-A, Judgement, 7 July 2006
Gatete Trial Judgement	*Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-A, Judgement, 31 March 2011
Gatete Appeal Judgement	*Jean-Baptiste Gatete v. Prosecutor*, Case No. ICTR-00-61-A, Judgement, 9 October 2012

Kajelijeli Trial Judgement	*Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement, 1 December 2003
Kalimanzira Appeal Judgement	*Callixte Kalimanzira v. Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010
Kambanda Trial Judgement	*Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence, 4 September 1998
Kamuhanda Appeal Judgement	*Jean de Dieu Kamuhanda v. Prosecutor*, Case No. ICTR-99-54-A, Judgement, 19 September 2005
Karemera et al. Interlocutory Appeal Decision on Judicial Notice	*Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006
Karera Trial Judgement	*Prosecution v. François Karera*, Case No. ICTR-01-74-T, Judgement and Sentence, 7 December 2007
Kayishema and Ruzindana Appeal Judgement	*Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001
Kayishema and Ruzindana Trial Judgement	*Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgement, 21 May 1999
Mpambara Trial Judgement	*Prosecutor v. Jean Mpambara*, Case No. ICTR-01-65-T, Judgement, 11 September 2006
Musema Appeal Judgement	*Alfred Musema v. Prosecutor*, Case No. ICTR-96-13-A, Judgement, 16 November 2001
Musema Trial Judgement	*Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement, 27 January 2000
Nahimana et al. Appeal Judgement	*Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Case No. ICTR-99-52-A, Judgement, 28 November 2007
Nahimana et al. Trial Judgement	*Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Case No. ICTR-99-52-T, Judgement, 3 December 2003
Ndindabahizi Appeal Judgement	*Emmanuel Ndindabahizi v. Prosecutor*, ICTR-01-71-A, Judgement, 16 January 2007
Niyitegeka Appeal Judgement	*Eliézer Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004

Niyitegeka Trial Judgement	*Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement, 16 May 2003
Ntagerura et al. Appeal Judgement	*Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe*, Case No. ICTR-99-46-A, Judgement, 7 July 2006
Ntakirutimana and Ntakirutimana Appeal Judgement	*Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004
Ntakirutimana and Ntakirutimana Trial Judgement	*Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-T and ICTR-96-17-T, Judgement, 21 February 2003
Muvunyi Trial Judgement	*Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Judgement and Sentence, 12 September 2006
Rukundo Appeal Judgement	*Emmanuel Rukundo v. Prosecutor*, Case No. ICTR-2001-70-A, Judgement, 20 October 2010
Rutaganda Appeal Judgement	*Georges Anderson Nderubumwe Rutaganda v. Prosecutor*, Case No. ICTR-96-3-A, Judgement, 26 May 2003
Rutaganda Trial Judgement	*Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Judgement, 6 December 1999
Semanza Appeal Judgement	*Laurent Semanza v. Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005
Semanza Trial Judgement	*Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003
Seromba Appeal Judgement	*Prosecutor v. Athanase Seromba,* Case No. ICTR-2001-66-A, Judgement, 12 March 2008
Setako Trial Judgement	*Prosecutor v. Ephrem Setako,* Case No. ICTR-04-81-T, Judgement, 25 February 2010
Simba Appeal Judgement	*Aloys Simba v. Prosecutor*, Case No. ICTR-01-76-A, Judgement, 27 November 2007

D. ICJ Judgements

ICJ Bosnia Judgement	*Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgement of 26 February 2007

E. Post-World War II Military Tribunals

Rohde et al. Judgement	*Trial of Werner Rohde et al.*, British Military Court, Wuppertal, 1 June 1946, Law Reports of Trials of War Criminals, Vol. V
Pohle et al. Judgement	*United States v. Oswald Pohl and Others*, Judgement of 3 November 1947, *reprinted in* Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council No. 10, Vol. 5, (1997), p. 958
Schmidt Judgement	*Trial of Max Schmidt*, United States General Military Government Court at Dachau, Germany, 19 May 1947, Law Reports of Trials of War Criminals, Vol. XIII
Schonfeld et al. Judgement	*Trial of Franz Schonfeld et al.*, British Military Court, Essen, 26 June 1946, Law Reports of Trials of War Criminals Vol. XI

F. Other Jurisprudence

Duch Trial Judgement	*Prosecutor vs KAING Guek Eav alias Duch,* Case File 001/18-07-2007/ECCC/TC, Judgement, 26 July 2010
Sesay et al. Trial Judgement	*Prosecution v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao,* Case No. SCSL-04-15-T, Judgement, 2 March 2009

G. Table of other Authorities

1. Domestic Laws

SFRY Criminal Code, effective 1 July 1977	Criminal Code of the Socialist Federal Republic of Yugoslavia, adopted by the SFRJ Assembly at the session of the Federal Council on 28 September 1976; declared by a decree of the President of the Republic on 28 September 1976; published in the Official Gazette of the SFRJ No.44 of 8 October 1976; correction made in the Official Gazette, SFRJ No. 36 of 15 July 1977; effective on 1 July 1977

2. International Legal Instruments and Commentaries

Statute	The Statute of the International Criminal Tribunal for the Former Yugoslavia established by Security Council Resolution 827

ICTR Statute	Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955
ACHPR	African Charter on Human and Peoples' Rights, 27 June 1981
AmCHR	American Convention on Human Rights, 22 November 1969
ACHR	Arab Charter on Human Rights, 15 September 1994
CPCP	Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 222
Geneva Convention I	Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in the Field, 12 August 1949
Geneva Convention II	Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949
Geneva Convention III	Geneva Convention III, relative to the Treatment of Prisoners of War, 12 August 1949
Geneva Convention IV	Geneva Convention IV, relative to the Protection of Civilian Persons in Time of War, 12 August 1949
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977
Commentary on Geneva Convention III	Commentary: Geneva Convention III Relative to the Treatment of Prisoners of War (ICRC, Jean S. Pictet, ed., 1960).
Commentary on Geneva Convention IV	Commentary: Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War ICRC (ICRC, Jean S. Pictet, ed., 1958)

Genocide Convention	Convention on the Prevention and Suppression of the Crime of Genocide of 1948, *entered into force* 12 January 1951, 78 U.N.T.S. 277
Draft Genocide Convention, U.N. Doc. E/447	Draft Convention on the Crime of Genocide, U.N. Doc. E/447, 26 June 1947
UDHR	Universal Declaration of Human Rights, 10 December 1948

H. Table of Short Forms

28th Division	28th Division of the Army of Bosnia and Herzegovina
a.k.a.	Also known as
ABiH	Army of Bosnia and Herzegovina
Accused	Zdravko Tolimir
Adjudicated Fact [...]	Fact number [...] in the Annex to the Adjudicated Facts Decision
APC	Armoured Personnel Carrier
BCS	The Bosnian-Croatian-Serbian language
BiH	Bosnia and Herzegovina
Birač Brigade	Sekovići Brigade
Bratunac Brigade	1st Bratunac Light Infantry Brigade
BT.	Transcript page from hearings before the *Blagojević* Trial Chamber, *Prosecutor v Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T
Bosnian Serb Forces	Forces composed of the VRS and MUP Forces and the civilian protection service
BVP	Armoured Infantry Combat Vehicle
CJB	Public Security Centre
COHA	Cessation of Hostilities Agreement
CSB	Security Services Centre
Drina Wolves	Podrinje Detachment or Drina Corps Manoeuvre Detachment
DTG	Sabotage and terrorist groups

DutchBat Bravo Company compound	Compound of Bravo Company of the Dutch Battalion of UNPROFOR at Srebrenica
UN compound	Compound of the Dutch Battalion of UNPROFOR at Potočari
DutchBat	Dutch Battalion of UNPROFOR
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECtHR	European Court of Human Rights
Ex. D[...]	Defence exhibit
Ex. P[...]	Prosecution exhibit
n.	Footnote
nn.	Footnotes
HV	Croatian Army
HVO	Croatian Defence Council
ICC	International Criminal Court
ICJ	International Court of Justice
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and other Such Serious Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
ICTY	International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
IKM	Forward Command Post
ILC	International Law Commission
JCOs	Joint Commission Observer

JNA	Yugoslav People's Army (Army of the Socialist Federal Republic of Yugoslavia)
KT.	Transcript page from hearings before the *Krstić* Trial Chamber, *Prosecutor v Radislav Krstić*, Case No. IT-98-33-T
LNU	Last Name Unknown
NATO	North Atlantic Treaty Organization
MP	Soldier in the Military Police
MSF	Médecins Sans Frontières
MUP	Ministry of the Interior in Republika Srpska
OP	Observation Post
OTP/Prosecution	Office of the Prosecutor
p.	Page
pp.	Pages
para.	Paragraph
paras.	Paragraphs
Parties	The Prosecutor and the Accused, Zdravko Tolimir
PHR	Physicians for Human Rights
PJP	Separate Police Units
PT.	Transcript page from hearings before the *Popović et al.* Trial Chamber, *Prosecutor v Popović et al.*, Case No. IT-05-88-T
PTT	Post Office building in Srebrenica
POW	Prisoner of War
65th Protection Regiment	65th Motorised Protection Regiment
RDB	State Security Centre
Rogatica Brigade	1st Podrinje Light Infantry Brigade
Romanija Brigade	2nd Romanija Motorised Brigade
RPG	Rocket propelled grenade

RS	Republika Srpska
Rules	Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia (IT/32/Rev. 47)
SDS	Serbian Democratic Party
SBP 2nd Sekovići Detachment	2nd Sekovići Detachment of the RS MUP Special Police Brigade
SBP	RS MUP Special Police Brigade
SFOR	Stabilisation Force (NATO-Bosnia)
SFRY	Socialist Federal Republic of Yugoslavia
SJB	Public Security Station
SRSG	Special Representative of the Secretary-General
Standard Barracks	Zvornik Brigade Headquarters
T.	Transcript page from proceedings before the Trial Chamber in the present case
TACP	Tactical Air Command Posts
TG	Tactical Group
TO	Territorial Defence Forces
Tribunal	*See* ICTY
UKRCoy	Ukrainian Company of UNPROFOR
UN	United Nations
UNDU	United Nations Detention Unit
UNHCR	United Nations High Commission for Refugees
UNMO	United Nations Military Observer
UNPF	United Nations Protection Force in Zagreb
UNPROFOR	United Nations Protection Force in BiH
VRS	Army of the Republika Srpska
Žepa Brigade	285th Eastern Bosnian Light Brigade of the ABiH
Zvornik Brigade	1st Zvornik Infantry Brigade

ANNEX B: OTHER PROCEDURAL MATTERS

1. This Annex will give an account of notable procedural developments during the proceedings. As such, it will supplement the outline given in the Introduction of the pre-trial and trial phases.[1]

A. Pre-Trial and Trial Issues

1. Initial Appearance and Plea

2. The Accused was transferred to the seat of the Tribunal on 1 June 2007.[2] On the same day Judge Carmel Agius designated Judge Kimberly Prost to be Judge in the Accused's initial appearance.[3] At his initial appearance on 4 June 2007 the Accused declined to enter a plea[4] and refused to identify himself, stating that he had been abducted.[5] The Accused also challenged the legality of his detention and the Tribunal's jurisdiction.[6] At a further appearance held on 3 July 2007, a plea of not guilty was entered on his behalf pursuant to Rule 62(C).[7]

2. Assignment of Counsel

3. The Accused requested legal aid and the assignment of Mr. Nebojša Mrkić as Lead Counsel.[8] On 28 July 2007 the Registry denied this request on the grounds that Mr. Mrkić did not fulfil the requirements set out in Rule 45 and consequently did not qualify for assignment as Lead Counsel.[9] Specifically, the Registry expressed its concerns that a conflict of interest could arise given Mr. Mrkić's previous involvement in the defence of Ljubiša Beara in the *Popović et al* case.[10] Subsequently, the Accused filed a request for review of the Registry's decision on the appointment of Mr. Mrkić as Counsel.[11] The Trial Chamber found that the Accused had failed to demonstrate

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1 *See supra* Judgement, paras. 16–26.
2 *See supra* Judgement, para. 19.
3 Order Designating Judge for Initial Appearance, 1 June 2007.
4 T. 11 (4 June 2007).
5 T. 5–19 (4 June 2007).
6 T. 5–19 (4 June 2007).
7 T. 36–38 (3 July 2007).
8 Registry Submission pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding the Accused Tolimir's 13 July 2007 Submission on Appointment of Permanent Counsel, with Confidential and *Ex Parte* Annexes I to III and Confidential Annex IV, 18 July 2007 ("Registry Submission 2007"), para. 10.
9 Registry Submission 2007, para. 8.
10 Registry Submission 2007, para. 8.
11 Submission by the Accused for Assistance of the Trial Chamber on Appointment of Permanent Counsel, 13 July 2007 (English translation), 6 July 2007 (BCS original).

any error on the part of the Registry in reaching a decision on the request, and therefore saw no reason to intervene.[12]

4. On 6 August 2007 the Accused chose to defend himself pursuant to Rule 45(F).[13] Throughout the pre-trial phase and immediately before the start of the trial, the Accused was informed of the difficulties he might face as a self-represented Accused, but he maintained the position that he would continue to represent himself.[14]

5. The Accused requested that he be assigned a legal advisor.[15] Pursuant to the Remuneration Scheme, he acquired the assistance of a legal team that included, among others, his legal adviser on international law, Mr. Aleksandar Gajić.[16] A legal adviser, Mr. Predrag Milovančević, and a case manager, Mr. Vuk Sekulić, were assigned to his defence team in January 2008.[17]

3. Refusal of the Accused to Accept Filings at the Pre-trial Phase

6. At the first Status Conference on 14 September 2007, the Pre-trial Judge raised the issue of the refusal of the Accused to accept filings in BCS in Latin script.[18] The Accused repeatedly submitted that he had the right to be tried in the official Serbian language, implying the Cyrillic script, and that he neither read nor understood the Latin script sufficiently.[19] The Pre-trial Judge dismissed these submissions in several written and oral decisions, stating that the Accused had been provided with relevant documents in a language he understood in order to guarantee his rights under Article 21 of the Statute.[20] The Accused's Appeal of the Pre-trial Judge's Oral Decision of 11

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12 Decision on Motion by the Accused for Review of the Registrar's Decision of 29 June 2007, 20 July 2007, para. 17.

13 Submission by the Accused to the Registrar for Leave to Conduct his own Defense or to Appoint Counsel of his own Choosing Pursuant to Article 21.4(d), and Rule 45(F) and Amended Rule 62(C) of the Rules, 10 August 2007 (English translation), 6 August 2007 (BCS original). *See also* Notification by the Deputy Registrar, 27 August 2007.

14 T. 56–58 (14 September 2007); T. 212–213 (31 October 2008); T. 317–318 (25 February 2010).

15 Submission by the Accused to the Registrar and the Pre-Trial Chamber for Leave to Appoint a Legal Advisor and Defence Team, 23 October 2007 (English translation), 10 October 2007 (BCS original), paras. 10–11.

16 On 18 March 2008, Aleksandar Gajić was assigned as a legal adviser on international law. Registrar's Updated Submission Pursuant to Rule 33 on the Assessment of the Qualifications of Mr. Aleksandar Gajić Regarding Zdravko Tolimir's Request for the Trial Chamber, confidential, 16 March 2010, para. 6, n. 2.

17 Registrar's Notification Regarding the Assignment of Legal Assistance to the Accused, 11 January 2008, para. 2; Registrar's Submission Regarding the Motions of the Accused Dated 13 February 2008 and 3 March 2008, 7 March 2008, para. 4.

18 T. 61-62 (14 September 2007).

19 Submission of the Accused for the Delivery of Documents and Transcripts of the Trial in a Script and Language that he Reads and Writes, 8 July 2007 (BCS original), 10 July 2007 (English translation), paras. 1–2; T. 62-64, 66-70, 74, 77-79, 84, 100, 103 (14 September 2007); Motion to the Pre-trial Chamber and the Registrar concerning Assistance in Appointing a Legal Advisor, Disclosure of Material in a Language the Accused Understands and Notification of Special Defense on the Charges in the Indictment, 16 November 2007 (BCS original), 20 November 2007 (English translation), paras. 1, 3.

20 Decision on Submission of Tolimir Requesting Translation of Documents and Transcripts, 20 July 2007; T. 73 (14 September 2007); T. 113-117 (11 December 2007).

December 2007 was denied[21] and his application for reconsideration was dismissed on 18 June 2008.[22] Despite this, the Accused continued to refuse to accept any documents in Latin script.[23] In a last warning on 30 June 2008, the Pre-trial Judge stated on behalf of the Chamber that the conduct of the Accused amounted to a substantial and persistent obstruction of the expeditious conduct of the trial and that if the Accused did not instruct the Registry that he was prepared to accept material in either Latin or Cyrillic script or if he failed to accept such material, the Chamber would issue an order imposing counsel on him.[24] Finally, on 9 July 2008, the Accused filed a submission in which he indicated that his legal advisers would accept filings in the form in which they were served and once his legal advisers had "linguistically processed" them, they would transmit them to him.[25] Thereafter, all filings were accepted.

4. Challenges to the Jurisdiction of the Tribunal

7. On 30 October 2007, the Accused submitted a motion challenging the jurisdiction of the Tribunal on the grounds of illegal arrest and general jurisdictional challenges.[26] On 14 December 2007, the Chamber issued a decision denying the motion.[27] On 28 July 2008, the Accused submitted a second motion challenging the Tribunal's jurisdiction over Counts 1 and 2 of the Indictment.[28] This motion was denied on 1 October 2008.[29]

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21 Appeal by the Accused to the Presiding Judge of Chamber II Against the Verbal Ruling of the Pre-trial Judge Ordering Communication Between the Accused and the International Tribunal and the Obligation to Accept Material Accompanying the Indictment in a Language, Script and Form That the Accused Does Not Understand, 25 January 2008 (BCS original), 31 January 2008 (English translation); Decision on Interlocutory Appeal against Oral Decision of the Pre-trial Judge of 11 December 2007, 28 March 2008, p. 10.

22 Accused's Motion to the President of the Tribunal and Members of the Appeals Chamber to Exercise their Discretionary Powers and Reconsider their Decision on the Appeal against the Interlocutory Appeal against the Oral Decision of the Pre-trial Judge of 11 December 2007, 16 April 2008 (BCS original), 18 April 2008 (English translation); Decision on Zdravko Tolimir's Request for Reconsideration of Appeals Chamber's Decision on 28 March 2008, 18 June 2008, p. 5.

23 T 175 (30 June 2008).

24 T. 176-177 (30 June 2008).

25 Submission of the Accused to the Registrar of the Tribunal and the Pre-trial Chamber pursuant to the Order of the Pre-trial Judge dated 30 June 2008 on Disclosure, 4 July 2008 (BCS original), 9 July 2008 (English translation), paras. 9–10, 12.

26 Preliminary Motions on the Indictment in Accordance with Rule 72 of the Rules, 7 November 2007 (English translation), 30 October 2007 (BCS original), paras. 1.1, 1.18. The Prosecution responded on 21 November 2007. Prosecution Response to the Accused's Preliminary Motion on the Indictment, 21 November, 2007.

27 Decision on Preliminary Motions on the Indictment Pursuant to Rule 72 of the Rules, 14 December 2007, paras. 29, 35.

28 Preliminary Motion Pursuant to Rule 72 (A) (i), (ii) with a request for clarification of the meaning of certain allegations in the indictment, 8 August 2008 (English translation), 28 July 2008 (BCS original), p. 4. The Prosecution responded on 22 August 2008. Prosecution's Response to Accused Tolimir's Preliminary Motion Pursuant to Rule 72 (A)(i) and (ii), 22 August 2008, para. 1.

29 Decision on Second Preliminary Motion on the Indictment Pursuant to Rule 72 of the Rules, 1 October 2008, pp. 10–11.

5. Composition of the Trial Chamber

8. On 1 June 2007, Judge Carmel Agius, in his capacity as Presiding Judge of Trial Chamber II, issued an order that the Trial Chamber competent to try the Accused would be composed of Judge Carmel Agius as the Presiding Judge, Judge O-Gon Kwon, and Judge Kimberly Prost.[30] On 2 October 2009, Judge Christoph Flügge replaced Judge O-Gon Kwon.[31] On 15 October 2009, Judge Antoine Kesia-Mbe Mindua replaced Judge Carmel Agius.[32] On 28 July 2009, the Secretary-General appointed Judge Prisca Matimba Nyambe to serve in the Tribunal for the trial of the *Tolimir* case, effective 1 December 2009.[33] On 18 December 2009, Judge Patrick Robinson, as President, issued an order that the Trial Chamber competent to try the Accused would be composed of Judge Christoph Flügge as the Presiding Judge, Judge Antoine Kesia-Mbe Mindua, and Judge Prisca Matimba Nyambe.[34]

6. Adjudicated Facts

9. The Prosecution filed the "Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B)" on 13 February 2009. On 17 December 2009 the Chamber granted the Motion in part, taking judicial notice of 523 of the 604 adjudicated facts proposed in the annex of the Motion.[35]

7. Bar Table Motions

10. During the trial, the Prosecution filed four bar table motions[36] and the Accused filed five bar table motions.[37] The Chamber granted in part one Prosecution motion,[38] granted in part two of the

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30 Order Regarding Composition of Trial Chamber, 1 June 2007.
31 Order Replacing a Judge on a Trial Bench, 2 October 2009.
32 Order Replacing a Judge on a Trial Bench, 15 October 2009.
33 Order Assigning Judges to a Case before a Trial Chamber, 18 December 2009.
34 Order Assigning Judges to a Case before a Trial Chamber, 18 December 2009.
35 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 17 December 2009.
36 Prosecution's Motion for Admission of 28 Intercepts from the Bar Table, with Confidential Appendices, 27 September 2011; Prosecution Motion for Admission of One Document from the Bar Table Pursuant to the Testimony of Ramiz Dumanjić, with Appendix, 22 December 2011; Prosecution Motion for Admission of Fourteen Exhibits from the Bar Table, confidential, 30 March 2012; Prosecution Motion for Admission of Two Exhibits from the Bar Table, 10 April 2012.
37 First Request for Admission of Documents from the Bar Table, 7 December 2011 (English translation), 30 November 2011 (BCS original); Second Request by the Defence for Admission of Documents from the Bar Table, 7 December 2011 (English translation), 30 November 2011 (BCS original); Third Request by the Defence for Admission of Documents from the Bar Table, 24 February 2012 (English translation), 20 February 2012 (BCS original); Fourth Request by the Defence for Admission of Documents from the Bar Table, 24 February 2012 (English translation), 21 February 2012 (BCS original); Fifth Request by the Defence for Admission of Documents from the Bar Table, 7 March 2012 (English translation), 5 March 2012 (BCS original).
38 Decision on Prosecution's Motion for Admission of 28 Intercepts from the Bar Table, 20 January 2012, p. 6.

Accused's motions,[39] and granted in full three of the Accused's motions.[40] The remaining bar table motions were denied.[41]

B. Other Matters

1. Nightly Monitoring

11. Upon the Accused's transfer to the Tribunal on 1 June 2007,[42] he underwent a preliminary examination by Dr. Falke, the UNDU Medical Officer.[43] Based on the initial assessment of the Accused's health condition Dr. Falke recommended medical monitoring of the Accused by UNDU personnel at thirty minute intervals, day and night.[44]

12. During the second Status Conference of 11 December 2007, the Accused objected to the nightly monitoring submitting that "[t]here is a light on in my cell even at night, and the guards insist upon waking me up every half-hour to check up on my health and on my situation in the cell."[45] The Accused subsequently raised numerous oral objections to the nightly monitoring before the Chamber,[46] and submitted objections in written submissions to both the Registry and the

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39 Decision on First Motion by the Accused for Admission of Documents from the Bar Table, 7 February 2012, pp. 5–6; Decision on Second Motion by the Accused for Admission of Documents from the Bar Table, 17 February 2012, 5–6.

40 Decision on Third, Fourth and Fifth Motions by the Accused for Admission of Documents from the Bar Table, 22 March 2012, p. 9.

41 Decision on Prosecution Motion to Admit One Document from the Bar Table Pursuant to the Testimony of Ramiz Dumanjić, 6 March 2012, p. 8; Consolidated Decision on Prosecution's Bar Table Motions and the Accused's Motion for Extension of Time, 14 May 2012, p. 15.

42 Order Assigning a Case to a Trial Chamber, 1 June 2007.

43 Notice of Filing of Public Redacted Version of the "Order Regarding the Nightly Monitoring of the Accused", 27 August 2010 ("Public Version of Order on Nightly Monitoring"), para. 6 (referring to Medical Correspondence from UNDU, confidential, 4 June 2007).

44 Public Version of Order on Nightly Monitoring, para. 10 (referring to a memorandum of 27 July 2007).

45 T. 121–122 (11 December 2007).

46 T. 199 (30 July 2008); T. 227–228 (31 October 2008); T. 245–246 (27 February 2009); T. 259–260 (25 June 2009); T. 288–289 (22 October 2009). The Accused complained, *inter alia*, that he was woken up by the UNDU staff "every 10 or 20 minutes, which is many times a night", and he indicated his wish that this monitoring be stopped and concluded that the lack of sleep might affect his ability to stand trial. T. 2044 (27 May 2010).

Chamber.[47] Furthermore, the Accused consistently refused to accept the medication offered to him at the UNDU.[48]

13. On 18 August 2009, the Registry made a submission pursuant to Rule 33(B), attaching a report by Dr. Falke, the UNDU Medical Officer, which recommended that the Accused continue to be monitored through half-hourly checks.[49] In addition, on 9 October 2009, the Registry submitted a report of an independent doctor, neurologist Dr. Vermeulen.[50]

14. On 26 May 2010, the Chamber ordered the Registrar to provide updated medical reports from both the Medical Officer of the UNDU and Dr. Vermeulen, or another independent neurologist if Dr. Vermeulen was not available, regarding the health status and need for medical monitoring of the Accused.[51] The Chamber also ordered that these medical reports include, but not be limited to, the following information: (1) a summary of the Accused's current health condition; and (2) an assessment of the necessity of the nightly monitoring of the Accused.[52]

15. On 24 June 2010, the Registrar made a submission pursuant to Rule 33(B), attached to which was a report dated 14 June 2010 by the reporting Medical Officer of the UNDU, Dr. Eekhof, concluding that in his medical opinion, the nightly monitoring of the Accused was still warranted.[53] On 6 July 2010, the Registrar, pursuant to Rule 33(B), submitted a second report from Dr. Vermeulen dated 23 June 2010 and an Addendum dated 5 July 2010, in which Dr. Vermeulen stated that "there was no rationale for monitoring [the Accused] every half hour", regardless of

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47 Submission of the Accused Concerning the Protection of His Discretionary and Guaranteed Rights and a Violation of Rights, 21 August 2008 (English translation), 13 August 2008 (BCS original); Urgent and Partially Confidential Requests From Zdravko Tolimir on Conditions of Detention, 19 September 2008 (English translation), 11 September 2008 (BCS original); Urgent Request from Zdravko Tolimir on Conditions of Detention Because of Deprivation of Sleep, 9 December 2008; Submission Concerning Deprivation of Sleep and the Fitting of Microchips to the Body of the Accused, 16 July 2009 (English translation), 10 July 2009 (BCS original); Annex to Zdravko Tolimir's Submissions Seeking the Cessation of So-Called Medical Supervision Measures Which Lead to Sleep Deprivation, 12 August 2009 (English translation), 31 July 2009 (BCS original) (containing a Specialist Physician's Report from Professor Gordana Ocić, a neurologist at the Bel Medic General Hospital in Belgrade which was based solely on the consideration of the medical documents relating to the Accused's health condition and stated that his neurological condition did not require continual nightly monitoring, but recommended that he be submitted to regular check-ups with a neurologist every six months).

48 Decision on Registry Submission Pursuant to Rule 33(B) Concerning the Order Regarding the Nightly Monitoring of the Accused, 1 September 2010, p. 1, n. 3 (referring to, *inter alia*, T. 122 (11 December 2007), T. 199 (30 July 2008), T. 228 (31 October 2008), T. 248 (27 February 2009) and T. 290 (22 October 2009)).

49 Registry Submission with confidential and *ex parte* Annex, 18 August 2009.

50 Registrar's Submission Pursuant to Rule 33(B) regarding the Medical Status of the Accused, confidential and *ex parte*, 9 October 2009.

51 Public Version of Order on Nightly Monitoring, para. 1 (referring to Order Regarding Medical Reports, confidential and *ex parte*, 26 May 2010).

52 Public Version of Order on Nightly Monitoring, para. 1 (referring to Order Regarding Medical Reports, confidential and *ex parte*, 26 May 2010).

53 Public Version of Order on Nightly Monitoring, para. 3 (referring to Registrar's Submission Pursuant to Rule 33(B) Regarding the Medical Status of the Accused, confidential and *ex parte*, 24 June 2010, Annex 1).

whether the Accused were to take medication.[54] On 12 July 2010, the Registrar, pursuant to Rule 33(B), submitted another medical report by Dr. Falke, the UNDU Medical Officer, which reviewed and addressed the report and addendum by Dr. Vermeulen.[55] Dr. Falke stated that he concurred with Dr. Vermeulen that the monitoring had no effect on the Accused's health situation, but he also submitted that, as the Medical Officer of the UNDU, he remained responsible even for those detainees who refuse to take the prescribed medication, and that therefore "control[ling]" the Accused's state was made necessary by the specific detention situation.[56] He concluded that the nightly monitoring regime should remain in place, adding that it had no negative impact on the Accused's health.[57]

16. On 25 August 2010, the Chamber ordered the staff of the UNDU to discontinue the nightly monitoring of the Accused provided that in the presence of a witness the Accused signed a written statement in which he confirmed his refusal to be monitored through nightly checks.[58] On 31 August 2010, the Accused signed a medical waiver in which he confirmed this refusal.[59]

17. On 1 September 2010, the Chamber issued a decision on the Registrar's submission of 30 August 2010,[60] whereby it ordered "the staff of the UNDU to discontinue the nightly half-hourly checks on the Accused with immediate effect."[61] As of 1 September 2010 the nightly monitoring of the Accused was discontinued and the Accused was informed accordingly.[62]

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54 Public Version of Order on Nightly Monitoring, para. 4 (referring to Registrar's Submission Pursuant to Rule 33(B) Regarding the Medical Status of the Accused, confidential and *ex parte*, 6 July 2010, Addendum, p. 1).

55 Public Version of Order on Nightly Monitoring, para. 5 (referring to Registrar's Submission Pursuant to Rule 33(B) Regarding the Medical Status of the Accused, confidential and *ex parte*, 12 July 2010).

56 Public Version of Order on Nightly Monitoring, para. 5 (referring to Registrar's Submission Pursuant to Rule 33(B) Regarding the Medical Status of the Accused, confidential and *ex parte*, 12 July 2010, Annex paras. 1–2).

57 Public Version of Order on Nightly Monitoring, para. 5 (referring to Registrar's Submission Pursuant to Rule 33(B) Regarding the Medical Status of the Accused, confidential and *ex parte*, 12 July 2010, Annex, para. 3).

58 Order Regarding the Nightly Monitoring of the Accused, confidential and *ex parte*, 25 August 2010. *See also* Public Version of Order on Nightly Monitoring, Disposition.

59 Statement in Accordance with the Trial Chamber Decision of 25 August 2010, 1 September 2010.

60 Urgent Registry Submission Pursuant to Rule 33(B) Concerning the Order Regarding the Nightly Monitoring of the Accused, with public, confidential and confidential and *ex parte* Annexes, 30 August 2010, wherein the Registry "submits that it may be appropriate for the Trial Chamber to order an independent psychiatric evaluation of the Accused prior to discontinuance of the nightly monitoring, in order to establish that the Accused is able to provide informed consent." *See* p. 3.

61 Decision on Urgent Registry Submission Pursuant to Rule 33(B) Concerning the Order Regarding Nightly Monitoring of the Accused, 1 September 2010. The Chamber recalled that it had no indication that the Accused, who had been fully capable of representing himself, lacked the soundness of mind required to give his informed consent and did "not deem it appropriate, under the present circumstances, to order an independent psychiatric evaluation of the Accused prior to the discontinuance of the nightly monitoring". *Ibid.*

62 Second Registry Submission Pursuant to Rule 33(B) Concerning the Order Regarding the Nightly Monitoring of the Accused, 3 September 2010.

2. Site Visit

18. From 10 until 16 October 2010, the Chamber and the parties conducted a site visit pursuant to the Decision on Prosecution Proposal for Site Visit.[63] The purpose of the site visit was to enable the Trial Chamber to familiarise itself with locations related to the crimes alleged in the Indictment, and not to collect evidence.[64]

3. Contempt Proceedings

19. On 4 May 2011, the Chamber initiated contempt proceedings against witness Zoran Petrović after he was notified of the contents of a subpoena *ad testificandum* and of his obligation to appear before the Chamber, yet had failed to appear as ordered or to show good cause why he could not appear.[65] The Chamber subsequently received correspondence from Mr. Petrović filed on 13 May 2011, indicating that he was willing to testify voluntarily as early as 18 May 2011 and, therefore, the Chamber vacated its Order in Lieu of Indictment and thereby terminated the contempt proceedings against him.[66]

20. On 21 September 2011, the Chamber initiated contempt proceedings against Dragomir Pećanac after he was notified of the contents of a subpoena *ad testificandum* and of his obligation to appear before the Chamber, yet had failed to appear as ordered or to show good cause why he could not appear. The Chamber held that Pećanac had knowingly and wilfully interfered with the administration of justice.[67] By majority, with Judge Nyambe dissenting, Pećanac was found guilty of contempt and sentenced to three months of imprisonment.[68]

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63 Decision on Prosecution Proposal for Site Visit, confidential, 2 July 2010.
64 Decision on Prosecution Proposal for Site Visit, confidential, 2 July 2010, p. 3.
65 *In the Contempt Case of Zoran Petrović*, Case No. IT-05-88/2-R77.1, Order in Lieu of Indictment, confidential, 4 May 2011, pp. 2–3.
66 *In the Contempt Case of Zoran Petrović*, Case No. IT-05-88/2-R77.1, Order Vacating the Order in Lieu of Indictment and Withdrawing the Warrant of Arrest for Zoran Petrović, confidential, 25 May 2011.
67 *In the Contempt Case of Dragomir Pećanac*, Case No. IT-05-88/2-R77.2, Judgement on Allegations of Contempt, 9 December 2011, paras. 34, 37–38.
68 *In the Contempt Case of Dragomir Pećanac*, Case No. IT-05-88/2-R77.2, Judgement on Allegations of Contempt, 9 December 2011, para. 46.

ANNEX C: CONFIDENTIAL ANNEX